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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
Con Ind	Conservative Independent
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Lab	Labour
Lab Ind	Labour Independent
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday, 1 June 2015.

2.30 pm

Prayers—read by the Lord Bishop of Norwich.

Introduction: Baroness Altmann

2.38 pm

Rosalind Miriam Altmann, CBE, having been created Baroness Altmann, of Tottenham in the London Borough of Haringey, was introduced and took the oath, supported by Lord Freud and Baroness Wheatcroft, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord O'Neill of Gatley

2.44 pm

Terence James O'Neill, Esquire, having been created Baron O'Neill of Gatley, of Gatley in the County of Greater Manchester, was introduced and took the oath, supported by Lord Griffiths of Fforestfach and Lord Davies of Abersoch, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

2.48 pm

Several noble Lords took the oath or made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Retirements of Members

Announcement

2.54 pm

The Lord Speaker (Baroness D'Souza): My Lords, I should like to notify the House of the retirements, with effect from today, of the noble Baroness, Lady Warnock, and the noble and learned Lord, Lord Mayhew of Twysden, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank both noble Lords for their much-valued service to the House.

Palestine

Question

2.55 pm

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what plans they have to recognise the State of Palestine.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, Britain remains firmly committed to the two-state solution, but we reserve the right to recognise the Palestinian state at a moment of our choosing, when we think it can best help to bring about peace. Bilateral recognition in itself would not end the occupation. Only negotiations that lead to a final settlement between the parties will deliver a Palestinian state living in peace and security side by side with Israel.

Baroness Tonge (Ind LD): I thank the Minister for her Answer and her patience. Does she agree that, despite Mr Netanyahu's declared support for a sustainable two-state solution after his recent re-election, he has continued with the same policies of settlement-building and discrimination against Palestinians? Does she further agree that, in view of the current weakness of the American Administration and our historic obligation under the Balfour Declaration, we must follow the example set by the Vatican, Sweden and 130 other states which have already recognised Palestine and take the lead ourselves in going to the United Nations?

Baroness Anelay of St Johns: My Lords, we take a lead in giving every encouragement to negotiations that would achieve a two-state solution. Without that, and if there were no agreements, any recognition would mean that there would not be a true Palestinian state. It would be a matter of words, not of reality—and reality is what we need to achieve. The noble Baroness raises an important point about the attitude of Mr Netanyahu after his election. It is crucial that he understands clearly that he must prevent the extension of the illegal settlements. We have made that clear; the Prime Minister has done so. As long as Mr Netanyahu persists in extending those settlements, it makes it more difficult for his friends elsewhere to support him.

Lord Pannick (CB): My Lords, in considering this Question, will the Government have regard to the report published last week by Amnesty International, which describes the policy of executions and torture by the Hamas Administration of their own people?

Baroness Anelay of St Johns: My Lords, I always take great care to look at Amnesty's reports; I admire the work that it does. The position of this Government is clear: torture is wrong and any death penalty, however it occurs and by whomever it is carried out, is wrong. Priorities for the FCO are to ensure that torture is prevented and that the death penalty is abolished throughout the world. I shall continue on that work myself.

Lord Leigh of Hurley (Con): Does my noble friend the Minister agree that this Question is the same as the Motion to Take Note in the name of the noble Lord, Lord Steel of Aikwood, from a couple of months ago and that, since that time, Hamas has taken no steps to enter into any negotiations and has kept to its principle of refusing to recognise the right of Israel to exist? Does she further agree that the biggest tragedy in the

[Lord Leigh of Hurley]
Middle East is that more than 100,000 people have been slaughtered there, 75,000 of them in Syria, and that this deserves our urgent attention?

Baroness Anelay of St Johns: My Lords, the Middle East process also requires our urgent attention and we shall not divert our eyes from that. It is of great regret that Hamas persists in its activity of attacking Israel, most recently in the past week or so by setting off rockets towards Israel. It is clear that there has to be leadership by the Palestinian Authority to return its Administration to Gaza and ensure that there can be steps towards negotiations for a two-state solution.

Baroness Morgan of Ely (Lab): My Lords, we know that some arms sold by the UK to Israel have been used to commit human rights violations in Gaza. What efforts have the Government made to ensure that British-made weapons are not turned on civilians in Gaza?

Baroness Anelay of St Johns: My Lords, as the noble Baroness will be aware, there is a stringent process by which arms exports are monitored. We are signed up entirely to the EU export controls on such and to international law, which governs these matters. We stated last summer that we would look at every award of arms exports on a case-by-case basis. That policy remains in place. Wherever we sell arms throughout the world, it is crucial that we keep a weather eye on how those arms are then used.

Lord Wright of Richmond (CB): My Lords, it will probably not surprise your Lordships if I express strong support for the case for Her Majesty's Government to recognise the state of Palestine within the 1967 borders, and without further delay. But have the Government taken into account the fact that early recognition will also be to Israel's benefit? It will surely strengthen the hand of the majority inside Israel who, like most of us—and, indeed, like Her Majesty's Government—still support the aim of a two-state solution. Does the Minister agree that the recognition of the state of Palestine on pre-1967 borders will also be a powerful encouragement for global recognition of the State of Israel on those same borders, including recognition of Israel in line with the Saudi Arab peace initiative of 2002, supported as it was by the 57 states of the Organisation of Islamic Cooperation?

Baroness Anelay of St Johns: My Lords, where I firmly agree with the noble Lord is that any peaceful negotiations that achieve a two-state recognition must be based on the 1967 borders, but that is only one aspect of the negotiations. Clearly, other aspects include the fact that Hamas must cease its attacks on Israel, so I remain with my original Answer. This is not, we judge, the moment most conducive to achieving peace for us to recognise unilaterally a Palestinian state. That is a matter that can take part only at the end of negotiations with all parties, so that it is a durable solution.

Lord Wallace of Saltaire (LD): My Lords, I understand that the French Government are consulting with others about the new UN Security Council resolution on the Palestinian issue. Can the Government assure us that we are co-operating closely with the French, and is it to be expected that the British Government will support that French resolution when it comes to the UN Security Council?

Baroness Anelay of St Johns: The noble Lord raises an important point and an accurate one. We understand that France is working hard in the United Nations on this very matter. It is a case where it is important for us not only to be aware of what the French are doing but to see the particular details. We have had experience at the United Nations of one of our closest colleagues—the French—not always showing us a document on Palestinian Authority matters until it was almost too late for us to have eyesight of it, let alone to consider it, and we need to consider these matters.

Medical Data Sharing

Question

3.03 pm

Asked by ***Baroness Ludford***

To ask Her Majesty's Government what assessment they have made of the statement by the Health and Social Care Information Centre that they have been unable to process up to 700,000 requests for individuals to opt out from sharing medical data with third parties.

Baroness Chisholm of Owlpen (Con): My Lords, the number of personal objections to data sharing lodged with GP practices is still unconfirmed. The Health and Social Care Information Centre is working to verify this estimated number. In the interim, for anybody who has registered a data-sharing objection with their GP, the HSCIC has taken the practical decision not to collect any identifiable GP data about that person for purposes beyond their own direct care.

Baroness Ludford (LD): My Lords, in thanking the Minister for that Answer, can I clarify that I am referring to evidence given by Kingsley Manning, the chair of the Health and Social Care Information Centre, to the Health Select Committee in the other place? It concerns opt-outs from the sharing of data held by the Health and Social Care Information Centre with third parties, public and private, which could include commercial organisations. The admission was made that 700,000 people have objected to such data sharing, but the centre says that it is unable to implement or respect those objections. Will the Minister invite the Information Commissioner to investigate this worrying situation, which is undermining patient trust in NHS data sharing, to the detriment of legitimate uses for such data sharing?

Baroness Chisholm of Owlpen: The Health and Social Care Information Centre is working closely with NHS England and the Department of Health to

put a method into place for resolving these issues. People's private identifiable health information cannot be shared unless there is a legal basis to do so. Data will be held securely and will be made available more widely only in safe de-identified formats with crucial safeguards.

Lord Hunt of Kings Heath (Lab): My Lords, in welcoming the noble Baroness to her new position, I also pay tribute to the noble Earl, Lord Howe, for his stewardship of the health brief over the last five years. Not the least of his contribution has been his willingness not just to come to Oral Questions but to do most of the statutory instruments and Questions for Short Debate as well, which your Lordships have much appreciated.

On the Question—I remind the House of my presidency of GS1—does the noble Baroness agree that it would be an absolute nonsense if those patients who wished to opt out were actually denied access to screening services? That would be the impact of putting their wishes into practice. Of course there are lessons to be learnt about mistakes that have been made, but surely the Government should be vigorously in favour of, and supporting, the proper sharing of information to the benefit of patients.

Baroness Chisholm of Owlpen: I thank the noble Lord for his kind words. I hope that your Lordships will have patience while I learn the ways of this House. Indeed, I feel that behind me my noble friend Lord Howe, who has indeed done an incredible job over the past 18 years, is sitting on his hands at the moment, longing to rush to the Dispatch Box, push me aside and take over this brief.

To answer the noble Lord's question, the Secretary of State intimated that we are determined to guarantee that personal data are protected, and we are enthusiastic about reacting to the benefits of sharing them. Indeed, Professor Peter Weissberg of the British Heart Foundation stated:

"Locked inside our medical records is a mine of vital information that can help medical scientists make discoveries that can improve … and save lives".

We must keep this at the forefront of our minds.

Lord Naseby (Con): Is it not a tragedy that 700,000 patients have decided to opt out of this scheme? Is this not comparable to what happened with MMR, when mothers opted out but were subsequently found to have done so to the detriment of their children? Against that background, while of course one protects the rights of any individual to make their own decision, will the Government ensure that all publicity is put behind what my noble friend has said in her answers today?

Baroness Chisholm of Owlpen: My Lords, I think that is very true. It is important that we take the patients with us. We need to remember that an informed patient is not a panicked patient. That is why a pathfinder will be started first to ensure that we have everything in place before we roll out these data nationwide.

Baroness Walmsley (LD): My Lords, I associate these Benches with the words from the noble Lord, Lord Hunt, welcoming the noble Baroness and thanking the noble Earl, Lord Howe. The noble Earl and I both have new roles in this new Parliament.

When the pause that is in place at the moment comes to an end and the programme is implemented again, will the Government undertake to implement a really high-quality public information programme that is much better than the last one, which left people not knowing what their rights were or how to opt out if that was what they wanted to do? Will the Government also do some research about the efficacy of the anonymity scheme for sexual health? Unless people have confidence that anonymity works, we are going to have a lot more than 700,000 of them opting out.

Baroness Chisholm of Owlpen: I thank the noble Baroness. Indeed that is true. That is why these pathfinders are so important. They will start in Blackburn and Darwen and make sure that all data-collection actions are evaluated and refined. NHS England has asked the National Data Guardian, Dame Fiona Caldicott, to lead an evaluation of the pathfinder stage, and nothing will go further ahead until she is satisfied that everything is in place.

Lord Ribeiro (Con): My Lords, it is important to make one correction about where this information is going. It is to be used by those who will be caring for the patients or the people involved. It is not for the use of private companies.

Baroness Chisholm of Owlpen: That is exactly right.

EU Referendum: Voting Age

Question

3.10 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what plans they have to consider proposals to allow 16 and 17 year-olds to vote in any referendum on membership of the European Union.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we introduced the European Union Referendum Bill in the House of Commons last week. This is an issue of national importance, so the parliamentary franchise is the right approach. It was the franchise used for previous UK referendums. The Government have no plans to lower the voting age. I am sure that noble Lords and colleagues in the other place will set out their views on this issue as the Bill proceeds through Parliament.

Lord Kennedy of Southwark (Lab): My Lords, does the noble Baroness not agree that learning from the positive way young people embraced the referendum in Scotland, seeking to address the democratic deficit we have here in the UK and allowing young people

[Lord Kennedy of Southwark]
aged 16 and 17 to vote on an issue that will have a profound effect on their future is the right and proper thing to do and that there can be no justification whatever for the Government not taking action to make it happen?

Baroness Anelay of St Johns: My Lords, I know from one or two words said in the Queen's Speech debate last Thursday that there is some support for such a proposal. I remind the House that the Scottish Parliament decided the franchise for the Scottish referendum. That was right as it was a Scottish matter: Scottish independence. It is therefore also right that any decision about the franchise for United Kingdom elections or referendums should be taken by the United Kingdom Parliament. This is a United Kingdom matter. We are basing the franchise very much on what is usual in our elections, with two slight additions that I think will be welcomed by this House: Commonwealth citizens in Gibraltar and Peers may also vote.

The Earl of Listowel (CB): My Lords, does the Minister agree that an important part of due diligence in the policy of lowering the voting age would be to consult child development experts? Is she interested to learn that the view of a child development expert who has treated 16 and 17 year-olds for depression, eating disorders and other health issues over many years is that while quite a few 16 and 17 year-olds would be old enough to make a good decision in this area, many would not?

Baroness Anelay of St Johns: The noble Earl raises several important issues which will bear greater scrutiny when we come to debate these matters. There is no standard age of majority in the United Kingdom at which one moves from being a child to being an adult. More than that, the noble Earl rightly raises the issues of capacity and capability. It is quite a difficult route to go down in Question Time because one could perhaps argue that some 14 year-olds should be able to have the vote. It is a serious matter, and I know that the House will approach it seriously.

Baroness Ludford (LD): My Lords, does the Minister agree that it is time for coherence and fairness throughout all the electoral processes in this country? We are a United Kingdom and there is surely no justification for having a different age in Scotland from that for the EU referendum. I gather that British residents abroad are going to get voting rights in general elections for a longer period, but not in time for the referendum. There is incoherence throughout the system. Will the Minister undertake with her colleagues to look at this as well as at the unfairness of first past the post?

Baroness Anelay of St Johns: My Lords, there is the issue of coherence in franchises for different elections; the noble Baroness raises a serious point. In particular, she refers to the fact that we as a Government have given a commitment to delivering votes for life for British citizens who have moved and now reside overseas. A Bill to deliver this as a permanent change later in this Parliament will achieve some move towards the coherence for which she calls. I am sure that that matter will be discussed broadly across Parliament over the forthcoming Sessions.

Baroness McIntosh of Hudnall (Lab): My Lords, may I take the noble Baroness back to her answer to the noble Earl, Lord Listowel? I believe that she said that there was no settled age of majority in respect of decisions—or did she say "maturity"? Either way, I remind her that we expect 16 year-olds to take very serious decisions. We certainly allow them—and sometimes expect them—to do so. Those decisions, for instance concerning whether they wish to join the Armed Forces or get married, are just as important and require just as sophisticated judgment as whether they are going to vote, and for whom. Is that not a powerful argument for considering very seriously their right to the vote now?

Baroness Anelay of St Johns: My Lords, I hope that I said that there was no standard age of majority in the UK. The noble Baroness raises two crucial decisions which young people at 16 may wish to take. However, I gently remind the House that at that age they may make those decisions and carry them through only with the permission of their parents.

Lord Cormack (Con): My Lords, is it not also true that they cannot smoke or drink legally? There are many in this House—I am sure my noble friend would agree—who were unhappy about the inconsistency and the precedent created in Scotland and who wholeheartedly approve of the fact that the Government have come to their senses on this one.

Baroness Anelay of St Johns: I agree with my noble friend.

Lord Purvis of Tweed (LD): My Lords, I am sure that many in this Chamber will be greatly relieved that they are now old enough to vote when it comes to the referendum on the European Union. However, perhaps at the other end of the age spectrum—with the greatest respect—in the Scottish referendum 16 and 17 year-olds showed with great maturity their capacity to make a choice as to whether they wished to carry on as part of a political union or not. At an event in Scotland on Friday in which I took part, the Scottish Conservatives said very strongly how much they were in favour of 16 and 17 year-olds having the vote in the European referendum. Has Ruth Davidson, the leader of the Scottish Conservatives, made representations to the Minister in support of 16 and 17 year-olds having the vote in the referendum?

Baroness Anelay of St Johns: Those representations have not been made personally to me yet, but I can almost hear them winging down the wire at the moment as the noble Lord sits down. The issue of who votes and how they vote, and at what age they gain the legal right to vote, is of course very serious. I have heard a lot of discussion by people who may end up in the for and against camps when it comes to a referendum as to why each of those groups would like to see 16 and 17 year-olds have the vote. The most important thing

is to have the referendum and give the British people throughout the United Kingdom and Northern Ireland the opportunity to make that choice.

Migration: Trafficking

Question

3.18 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what progress they and their international partners have made in deterring the trafficking of migrants and creating safe havens in North Africa and the Middle East.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, since the extraordinary European Council in April, EU member states have agreed to establish a military CSDP operation to disrupt trafficking and smuggling networks. That is a considerable achievement, but we also need to address the root causes of that migration, so we are taking forward initiatives in source and transit countries. The regional development and protection programme in the Middle East is one model that we may be able to develop further.

Lord Alton of Liverpool (CB): My Lords, I am grateful to the noble Baroness for that reply. Does not the news that HMS "Bulwark" rescued 741 migrants on Saturday, that more than 4,200 migrants, including young children, were rescued on Friday, that more dead bodies were added to the 1,800 corpses recovered this year, and that new people-smuggling routes are being opened to Greece, underline the scale of this human catastrophe? Against that backdrop, do the Government support the creation of safe havens? Do they support last week's calls from the European Union for relocation and resettlement plans, and how do we justify the pitiful 187 places provided in the United Kingdom against Germany's 30,000 places and Lebanon's 1.2 million? Are we any nearer to ending the causes of this exodus from hellholes such as Libya and Syria, to which the noble Baroness referred a moment ago?

Baroness Anelay of St Johns: My Lords, there were several crucial questions there, and I know that we will have the opportunity to develop them further in short debates. There has to be no doubt that this is a human catastrophe, caused by those who are making billions out of illegal trafficking and smuggling individuals. It is important that the policies that we adopt deal, first, with the humanitarian approach, which is what "HMS Bulwark" is involved in—and, secondly, breaks that link between travelling on the boat to get here and the certainty of getting settled. If we can do that, we can break the smugglers' grip on these people, for whose lives they care nothing. That is the link that we must break. So it is important to provide some humanitarian way in which to give hope to those who are travelling that they can go back, or have safety where they are in north Africa, but let them understand that there will not be settlement here. As I said on Thursday, if we offer settlement to 1,000 people, what do you say to the 1,001st person? Do you say, "No, our door is closed."?

Lord Boateng (Lab): My Lords, these traffickers and their wicked agents operate with almost complete immunity within sub-Saharan Africa. The EU and AU have a strategic partnership. What steps are being taken within the security, intelligence and law enforcement pillar of that partnership to tackle this problem at source and gain the co-operation of African Governments in a law enforcement measure to protect the people of Africa from this wicked trade? Yes, the terrible scenes that we see on the front pages of our newspapers and in our media are a reproach; they are a reproach to Europe but they are a reproach to African Governments, too.

Baroness Anelay of St Johns: I agree entirely with the facts and sentiments of the noble Lord. He refers to the Khartoum process, the EU-African Union process, which seeks to provide stability and disrupt these appalling traffickers and smugglers and their networks. We certainly give all our support to that, both in front of and behind the scenes. With regard to the work that we are doing beyond "HMS Bulwark", joint intelligence activity seeks to find out from those making these hazardous journeys more information that can help us to provide a focused answer to how we disrupt those networks. But disrupting the networks can happen only after we have got agreement with Libya and the United Nations Security Council resolution. It is a priority that we do that.

The Lord Bishop of Norwich: My Lords, what will become of the refugees and migrants who are trapped in Libya? Since neighbouring countries have closed their borders and current plans are to sink the boats that are smuggling people from Libya, are these refugees and migrants simply consigned to certain abuse and death? Can we do nothing at all to help them?

Baroness Anelay of St Johns: My Lords, it is clear that we must focus our work on being able to provide some form of humanitarian effort. As I said in my original Answer, we are seeing whether we can use the example of the systems that we have in place in Syria to be able to provide that kind of haven—not a haven from which people then move across the Mediterranean, on that hazardous journey, with an uncertain future, but one where perhaps they can have some education and training towards employment, so that they can have a future, which is what all of us deserve.

Lord Marlesford (Con): My Lords—

Lord Avebury (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): Order! I think that we are still getting used to taking turns now that we are in a new Parliament and we are sitting in different places. May I suggest that my noble friend Lord Marlesford has an opportunity to ask a question on this occasion?

Lord Marlesford: My Lords, does my noble friend agree that it is more efficient and practical to assess the claims of would-be migrants, whether on the grounds of asylum, refugee status, economic migration or merely, understandably, that of wanting a better life, before they arrive in Europe? Assessing claims and then removing those who have no valid claim is almost impossible once they have arrived in Europe, which therefore means that those who have the greatest claim do not get permission to stay. Would it not therefore be better that those who are rightly rescued from peril on the sea are returned to the mainland from which they came?

Baroness Anelay of St Johns: My Lords, it is a matter of fact that asylum claims may only be processed and granted once people have reached the United Kingdom. That is how our legislation lies. There is a danger that if one has processing areas—I hate the word "processing", but noble Lords know what I mean—for asylum across the north African shore, say, those areas would act as a magnet in persuading people to go there. The most important thing is to disrupt the smuggling and trafficking networks to get at this business model which has no moral authority.

Childcare Bill [HL]
First Reading

3.26 pm

A Bill to make provision for free childcare for young children of working parents and the publication of information about childcare and related matters by local authorities in England.

The Bill was introduced by Lord Nash, read a first time and ordered to be printed.

Constitutional Convention Bill [HL]
First Reading

3.26 pm

A Bill to make provision for a convention to consider the constitution of the United Kingdom; and for connected purposes.

The Bill was introduced by Lord Purvis of Tweed, read a first time and ordered to be printed.

Council Tax Valuation Bands Bill [HL]
First Reading

3.27 pm

A Bill to make provision for the introduction of a new set of council tax valuation bands to apply to all dwellings bought or sold after 1 April 2000.

The Bill was introduced by Lord Marlesford, read a first time and ordered to be printed.

Arbitration and Mediation Services (Equality) Bill [HL]
First Reading

3.27 pm

A Bill to make further provision for arbitration and mediation services and the application of equality legislation to such services; to make provision for the protection of victims of domestic abuse; and for connected purposes.

The Bill was introduced by Baroness Cox, read a first time and ordered to be printed.

Access to Palliative Care Bill [HL]
First Reading

3.28 pm

A Bill to make provision for equitable access to palliative care services; for advancing education, training and research into palliative care; and for connected purposes.

The Bill was introduced by the Countess of Mar (on behalf of Baroness Finlay of Llandaff), read a first time and ordered to be printed.

Property Boundaries (Resolution of Disputes) Bill [HL]
First Reading

3.28 pm

A Bill to make provision for the resolution of disputes concerning the location or placement of the boundaries and private rights of way relating to the title of an estate inland; and for connected purposes.

The Bill was introduced by the Earl of Lytton, read a first time and ordered to be printed.

Queen's Speech
Debate (3rd Day)

3.29 pm

Moved on Wednesday 27 May by ***Baroness Bottomley of Nettlestone***

That an humble Address be presented to Her Majesty as follows:

"Most Gracious Sovereign—We, Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal in Parliament assembled, beg leave to thank Your Majesty for the most gracious Speech which Your Majesty has addressed to both Houses of Parliament".

The Parliamentary Under-Secretary of State, Scotland Office (Lord Dunlop) (Con) (Maiden Speech): My Lords, it is a great honour to open the debate today. I have the greatest respect for the wealth of knowledge and experience that exists within your Lordships' House—

wealth that is amply demonstrated by the list of speakers for this debate. It would be fair to say that entering this House and becoming a Minister at the same time is doubly daunting, so I am grateful for the warm welcome and advice I have received from noble Lords on all sides of the House and from the officers and staff.

To serve in the Scotland Office is a particular honour for me. My family has for many years been associated with Clydeside; indeed, my great-grandfather was Lord Provost of Glasgow during the First World War. Early in my career I worked for George Younger, a distinguished Scottish Secretary and later Member of this House. Three years ago I returned to government service after a gap of 20 years spent running my own business, and it was the tug of Scotland that brought me back at a momentous time in our country's history. I recognise that there is unfinished business, and I feel privileged to have been given the opportunity to serve in the Scotland Office.

I follow in the footsteps of the noble and learned Lord, Lord Wallace of Tankerness, as the Scotland Office spokesman in this House. Now that he sits on the other side of the House, I hope it will not be career limiting for either him or me to say that we worked well together in government. If I can discharge my duties in this House with half as much skill and dedication as the noble and learned Lord, I will feel I have served this House and this Government well.

I also welcome the noble Lord, Lord Lisvane, who was for many years a distinguished servant of the other place, and the right reverend Prelate the Bishop of Leeds. They, like me, will be making their maiden speeches in today's debate and I look forward to listening to their contributions. I also thank my noble friend Lord Faulks, who will be closing the debate.

Today's debate brings together three issues—constitutional, legal and devolved affairs—and it is right that they are brought together. They reflect key aspects at the heart of the legislative programme set out in the gracious Speech—a programme founded on the idea of one nation, bringing fairness to all parts of our United Kingdom, where the people and institutions across this nation are treated with respect.

Let me say that although the Scottish National Party is not represented in this House, we will continue to be very mindful of its views. Last year's Scottish referendum has caused much reflection on what previously had been taken for granted—the purpose of the United Kingdom in our modern world and what binds us together. The case for the United Kingdom is one that we must make in this House but also directly to the people of Scotland: the opportunities of our single, integrated domestic market; the solidarity that comes from pooling and sharing risks and resources in our social union; the protection of our common defence and security arrangements; the strength of having our own currency backed by the stability of the Bank of England; and all this bound together by values, experiences and history, shared by millions of people across our country.

Of course, the United Kingdom's constitutional arrangements have evolved over time and been adapted to reflect the unique circumstances of the world's most successful and enduring multination state, and they continue to evolve today. The Government are committed to establishing a stable resting place for the constitutional arrangements across our country—arrangements that provide the different nations of the United Kingdom with the space to pursue different domestic policies should they choose, while protecting and preserving the benefits of being part of the bigger UK family of nations.

At the heart of the legislative programme set out in the gracious Speech are measures to change how power is distributed across the UK and how decisions are taken—changes that will strengthen fiscal responsibility and accountability. In bringing forward these measures, the Government recognise that there is no one-size-fits-all solution. The devolution settlements reflect the distinct histories and circumstances of the different parts of the United Kingdom, and there is already a strong track record to build on.

In the last Parliament, the Government committed to devolving further powers to Scotland and Wales. These were delivered. We also worked with the Scottish Government to give people in Scotland a referendum. They voted clearly and decisively to stay within the UK. In this Parliament, we will move quickly to implement the further devolution that all parties agreed for Wales and Scotland and to deliver, too, the Stormont House agreement in Northern Ireland. Importantly, we will also address the issue of fairness for England. Delivering on these commitments is a fundamental matter of trust.

For Scotland, we have already introduced a Bill to deliver in full the Smith commission agreement, reached by all five of Scotland's main political parties. The Scottish Parliament will become one of the most powerful devolved Parliaments in the world. The Bill will increase the financial accountability of the Scottish Parliament through the devolution of income tax rates and bands, air passenger duty and assignment of VAT revenues. It will increase responsibility for welfare in areas that complement the Scottish Parliament's existing powers. It will increase the scope for the Scottish Government to be more involved in the scrutiny of a range of public bodies and give significant new responsibility for roads, speed limits, onshore oil and gas extraction, and consumer advocacy and advice.

Scotland chose a united future in the United Kingdom. Now, the time is fast approaching when people in Scotland need clarity about how these new powers will be used and at what level the taxes will be set. That must be the next great debate in Scotland.

For Wales, we are committed to implementing the St David's Day agreement in full. A Wales Bill will be introduced later in this Session. It will provide a new, reserved-powers model for Welsh devolution to help clarify the Assembly's powers. It will devolve additional powers in areas such as transport, energy, the environment and local government, and enable the Assembly to decide how it organises itself and its elections and regulates its own proceedings. The Bill provides a robust package that will make the Welsh devolution settlement clear, sustainable and stable for the future.

The Stormont House agreement offers the prospect of a more prosperous, stable and secure future for Northern Ireland. It covers a wide range of issues:

[LORD DUNLOP]
welfare reform, fiscal sustainability, measures to deal with the legacy of the Troubles and improvements to the working of devolution. It is disappointing that the Northern Ireland parties were unable to support the Welfare Reform Bill in the Assembly last week. That is a setback to delivery of the Stormont House agreement. The Secretary of State for Northern Ireland will be meeting the Northern Ireland Executive parties tomorrow to establish how best to make progress.

However, the UK Government remain committed to delivering the elements of the Stormont House agreement for which they are responsible. We will therefore introduce a Bill to deliver a number of key commitments in the agreement to deal with the legacy of the Troubles. It will establish an independent body to take forward outstanding investigations into unsolved Troubles-related deaths. It will provide an independent commission to enable victims and survivors to seek and privately receive information about the deaths of their next of kin, and establish an oral history archive for people from throughout the UK and Ireland to share experiences and narratives related to the Troubles. These measures represent significant progress towards helping Northern Ireland deal with its past in a fair, balanced and proportionate way.

Of course, underpinning each of the settlements is funding. By moving to greater self-funding, and thus greater accountability, we are delivering mature and enduring settlements that provide incentives for economic growth. For Scotland, the devolution of further responsibility for taxation and public spending will be accompanied by an updated fiscal framework, as recommended by the Smith commission. The fiscal framework will encompass a number of elements and work alongside the Barnett formula to deliver a fair settlement for Scotland and the rest of the UK.

The Barnett formula will, of course, become less important as the Scottish Government become responsible for raising more of their own funding following the devolution of further tax powers. Negotiations with the Scottish Government on the fiscal framework are expected to proceed in parallel with the passage of the Bill, so there will be ample opportunity for your Lordships to consider the entirety of the new settlement.

For Wales, the UK Government will introduce a floor in the level of relative funding they provide to the Welsh Government. The details will be agreed at the next spending review in the expectation that the Welsh Government will call a referendum on income-tax powers in this Parliament.

December's Stormont House agreement provided a very significant package of additional funding and budgetary flexibilities aimed at helping the Northern Ireland Executive put their finances on a sustainable footing for the future. It remains vital that the Northern Ireland parties get on with the commitments they made to implement the agreement, not least because moving forward on corporation-tax devolution clearly requires the Executive's finances to be sustainable.Taken together, these measures will ensure a sustainable fiscal environment for the devolved Administrations and for the UK as a whole.

As we take forward our planned changes to the devolved settlements for Scotland, Wales and Northern Ireland, it would not be right to neglect the needs of England. The Government have announced plans to decentralise power in England to help bring about a balanced economic recovery. However, greater decentralisation within England does not provide an answer to how Parliament operates to better reflect the principle of English consent. Therefore, the Government will bring forward proposals for the authorities in the other place to consider. These will ensure that distinct decisions affecting England can be taken only with the consent of the majority of MPs from English constituencies. These proposals are necessary to strengthen England's voice in the law-making process, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within our United Kingdom.

Successive Governments have grappled with the West Lothian question. This will be the one who answers it. We will answer it in a way that maintains the integrity of the United Kingdom Parliament. MPs from all parts of the UK will continue to deliberate and vote together on matters that affect the whole of the UK. For matters where responsibility has been devolved, all MPs will continue to vote during important parliamentary stages. These proposals will help safeguard the union by embedding fairness into Parliament's law-making process.

As we deliver on our commitments to each part of the United Kingdom, the Government recognise the importance of ensuring that the devolved aspects of our constitution work as a whole. People across the UK expect all four Administrations to work together. A commitment to good working relations and respect for the memorandum of understanding, which sets out how we will work together, needs to come from all sides. We are committed to exploring jointly a range of options for enhancing relations with the devolved Administrations. The report of the Constitution Committee of this House on this subject, published in the last Session, is a very welcome contribution. I know that there will be a range of views on this and we will listen to them. We will work together to make collective changes to build partnerships that are strong and effective.

Finally, I turn to the important issue of human rights. In his closing speech my noble friend Lord Faulks will cover the equally important issue of victims' rights. The Government are committed to human rights. They were elected with a mandate to replace the Human Rights Act with a Bill of Rights. Protection of human rights is vital in a democratic and modern society, and this Government will be as committed to upholding human rights as any. But we must remember that the protection of human rights does not begin and end with the Human Rights Act. Rights were protected prior to that Act and they will continue to be protected under a Bill of Rights. The purpose of the Bill of Rights is not to reduce human rights but to reform our system and restore credibility to their legal framework. We know that this will be significant legislation and we will take the time to get it right. We will consult widely and consider the full implications, but for those reforms there is a compelling argument and a strong mandate.

The reforms set out in the gracious Speech demonstrate our intention to govern with respect and to honour our promises to improve governance for all parts of our United Kingdom. We will bring forward legislation to secure a strong, fair and enduring constitutional settlement. The cause of bringing together a united kingdom is a noble one in which your Lordships' House will, I know, play a full part. I look forward to listening to the debate today on all these important issues.

3.45 pm

Lord Falconer of Thoroton (Lab): My Lords, I congratulate the noble Lord, Lord Dunlop, on his maiden speech and on his new role as Parliamentary Under-Secretary of State for Scotland. He studied politics and economics at Edinburgh University under the former Labour MP for Berwick and East Lothian, Professor J P Mackintosh, who appears to have had only a mixed influence on him. He worked for Mrs Thatcher's inner circle as one of the seven members of her policy unit where, for two and a half years, he played a key role in the introduction of the poll tax in 1989. He was appointed the Prime Minister's adviser on Scotland in March 2012. He is a distinguished and capable individual and will be a real contributor to your Lordships' House. He is not to be confused with the Andy Dunlop of the Scottish band Travis, whose best-known album is "The Man Who"—even though he, the noble Lord, Lord Dunlop, is the man who brought the poll tax to Scotland

I congratulate also Michael Gove on his appointment as Lord Chancellor and Secretary of State for Justice, and I welcome the noble Lord, Lord Faulks, who has been restored to his position as Minister for Justice. The noble Lord, Lord Faulks, will have his work cut out. He is caught between the Home Secretary and the Lord Chancellor, both of whom, according to the *Daily Telegraph* this morning, want to leave the European Convention on Human Rights. The Home Secretary, noble Lords will recall, thought that Article 8 of the convention applied when you had a relationship with your cat; and the Lord Chancellor wrote, before he became an MP, that abolishing the death penalty has,

"led to a corruption of our criminal justice system, the erosion of all our freedoms and has made the punishment of the innocent more likely".

So the senior members of this Government may need some guidance from the noble Lord, Lord Faulks, as to precisely what the law and the constitution mean.

The gracious Speech is billed as a one-nation speech. A serious one-nation policy programme would be a set of proposals to bind the nation together: Scotland with the rest of the United Kingdom, unions and employers, rich and poor, young and old, north and south, London and the rest. These proposals would encourage individuals and businesses to realise their potential to the full while providing proper support and protection for those who need it.

In the areas we debate today—the constitution, the law and devolution—the gracious Speech contains proposals which are divisive and motivated by short-term political advantage rather than long-term national benefit. There are proposals to introduce new standing orders for the Commons which will create two tiers of MPs by giving English MPs a veto on laws which apply to Scotland only—a dangerous further wedge between Scotland and England; proposals for the repeal of the Human Rights Act which will reduce the ability of those who find themselves the victims of state abuse adequately to defend themselves—a retreat to creating further division between government and governed; proposals which may involve the Human Rights Act continuing to apply in Scotland and Northern Ireland but not in England and Wales—a further wedge between England and Wales on the one hand and the rest of the United Kingdom; proposals to make it more difficult for the unions to donate to political parties and ballot their members while doing nothing to increase the transparency of donations by private donors to political parties, particularly the Tory party—a wedge between the rich and the rest.

There are no proposals to deal with the damage done in the last five years in the area of justice—for example, the decision to take the overwhelming majority of social welfare law out of the scope of legal aid. Now it is no longer possible to obtain legal aid in the areas of welfare benefit law; employment law; housing law, except possession cases; debt law; and much of immigration law—relevant to all but particularly to the poor, the marginalised, the vulnerable and the disabled. There are also no proposals to deal with the imbalance in registration of voters. The young, the renters, those who do not own their own homes, the poor and those from minority ethnic groups have the highest levels of non-registration—and, among those from these groups who are registered, of non-voting. We must be vigilant to ensure that our elections truly are one-nation elections.

In the last election, for example, 43% of those aged between 18 and 24 who were registered to vote voted, whereas 78% of those aged over 65 did so. I am glad that the turnout was so high among the over-65s. I worry that the Government will not be a Government for the young. Of the 43% who voted in this youngest age group, only around a quarter supported the Conservatives—so the Conservatives have the support of maybe 12% of those aged between 18 and 25.

This summer, the Government must decide whether to bring forward to December 2015 the end date for transitional arrangements for individual electoral registration. If they do, yet more people will be removed from the register, mostly from the vulnerable categories. The gracious Speech contains no proposals of any sort on this.

I will move on to the things that the gracious Speech does deal with. The first is human rights, which is the Lord Chancellor's responsibility. He was Secretary of State for Education. He fell out with his civil servants. The Permanent Secretary left shortly after his appointment. His special adviser was vitriolic about practically every other part of the Government, including the Prime Minister and the Deputy Prime Minister. He characterised those who opposed his policies as "the Blob". A member of the Department for Education advisory group said of his department that,

"they don't think things through very carefully, they don't listen to anyone and then just go ahead and rush into major changes".

[Lord Falconer of Thoroton]

He was removed as Education Secretary as Lynton Crosby regarded him as too toxic. He lasted around a year as Chief Whip.

The office of Lord Chancellor is not a job creation scheme for a valued colleague of the Prime Minister who has found ministerial office difficult. Those who depend on our justice system—and there are very many—need to have faith in the person in charge. It is important here, and for our standing in the world, that the person in charge understands the United Kingdom's values, and in particular the central importance of the rule of law and what it means. The system exists not for the lawyers, the politicians or the judges, but for those it seeks to protect.

In the other place on Thursday of last week, the Lord Chancellor was asked three times whether the Government would leave the European Convention on Human Rights. He refused to answer. I read in the *Daily Telegraph* this morning that the Lord Chancellor and the Home Secretary want to pull out of the convention, and the Prime Minister wants to stay in—hence the Lord Chancellor's evasions in the Commons last Thursday. I back the Prime Minister against the Lord Chancellor.

In the same speech, the Lord Chancellor dismissed those who defended the current human rights laws as being like Fat Boy in *The Pickwick Papers*, who liked to make your flesh creep. Despite my best efforts, I will for ever be Fat Boy—on this occasion, fat and proud.

I wonder if the sisters of Anne-Marie Ellement would agree with the Lord Chancellor. She was a member of the Military Police. She alleged that she had been raped by two members of the Military Police, and thereafter she was bullied for making the allegation. She killed herself. At the first inquest there was an inadequate investigation of what had happened. Only by relying on the Human Rights Act were Anne-Marie's sisters able to get the court to order a second inquest, where the truth emerged. That protection would go if the Conservatives get their way as set out in their October 2014 document; the new human rights law would not cover the military.

The US Government wanted to extradite Gary McKinnon to stand trial for allegedly hacking into US military computer systems from his bedroom in the United Kingdom. The evidence was clear that if he was deported to the United States, his health was so bad that he was at very severe risk, including the real risk of suicide. Only the Human Rights Act allowed the Home Secretary to stop his deportation. That is another of the particular aspects of the Human Rights Act that the Tory document of 2014 wishes to remove.

The Government say that they do support human rights, but that they should be British human rights. "British human rights" appears to mean, "the British Government's view of human rights". That means the Executive, since to a large extent it is the Executive who control the legislature. According to their October 2014 document, the Conservatives will reintroduce the rights in the same wording as the convention rights, but make it clear that there are aspects of those rights that they will specifically exclude. Examples include the prohibition on deportations if the deportee would be tortured or killed—those deportations could go ahead—or the application of human rights law to the military. An Executive able to pick and choose the extent to which human rights apply is an illusory protection. If we are serious as a country about providing our citizens with protection, we should not consider this course. The importance of there being an authority—not one that interferes with UK sovereignty but external to the UK Government—which defines the limits of human rights is that it prevents human rights becoming what a Government say they are.

One aspect of the Conservative attack on the human rights settlement as it currently exists is that the Conservatives say they want to prevent the European Court of Human Rights overruling our own courts. In his speech in another place on Thursday, the Lord Chancellor said:

> "We want to preserve and enhance the traditions of human rights. There will be no diminution in that area; indeed there will be an enhancement of convention rights as a result of the changes we propose to make. But the difference",

is that:

> "We want to ensure that they are consistent with common law traditions and that our Supreme Court is genuinely supreme".—[*Official Report*, Commons, 28/5/15; cols. 291-92.]

It is difficult to know what he means by "enhancement" when all the proposals so far produced by the Conservatives involve a reduction in rights.

Further, his reference to the Supreme Court being "genuinely supreme" betrays a misunderstanding of the current position. The UK courts are the final arbiters of what UK law provides, including human rights law. There is no appeal from what the UK courts say UK law is. The UK Supreme Court has been clear that it will not treat itself as bound by decisions of the European Court of Human Rights and has departed from European court decisions when it has disagreed with them. So both in form and in reality the UK Supreme Court is supreme, and if the European Court of Human Rights finds the United Kingdom to be in breach of the convention, the European court cannot overrule either the UK courts or Parliament. All the European court can do is to determine whether there is a breach of the convention—and if there is, it is for the UK Parliament to decide how to remedy the breach. I am glad that the Government have paused and I urge them to abandon these proposals. If they do not, my party, the Commons, this House, and maybe even Fat Boy Cameron will resist them.

The Government's approach to the Human Rights Act is just one example of how they are willing to risk not just our standing in the world but the relationship between the nations of this country for narrow partisan interests. We need further devolution to Scotland, Wales and the English regions that is fair and lasting, and is done in a way that builds the broadest possible consensus. We are committed to ensuring that the vow is delivered in full, which means keeping the Barnett formula, alongside more powers to make the Scottish Parliament one of the most powerful devolved parliaments in the world. My colleagues in the Commons have already vowed to amend the Scotland Bill to give the Scottish Parliament the final say on some additional aspects of welfare and benefits.

We must also put Welsh devolution on a stronger statutory basis, and we agree with taking forward proposals from the Silk commission. However, we think that the Government should make sure that Wales is not unfairly disadvantaged by the Barnett formula and ensure a fair funding settlement for Wales by introducing a funding floor.

We welcomed many aspects of the Stormont House agreement, but the current stalemate on welfare reform, and the financial and political implications, mean that that agreement is now in a precarious position. I hope that the UK Government and the Northern Ireland Executive are working together to find a way forward to avoid a political and financial crisis.

Greater devolution within England is also necessary. We strongly support the devolution of much greater powers and control of budgets to the city regions and counties, where it is clear that those cities and countries have the capacity to take on the devolved power and budgets. But it is for those cities and counties to determine for themselves the appropriate leadership arrangements. Whether a mayor is best should be for them to decide, not central government.

This is not a constitutional programme with the best interests of the country at heart. It is a programme aimed at short-term political advantage. It promotes division and two nations. It threatens the union, the reach of our voting system, the rights of our citizens and the strength of our nation as a defender of human rights in the world.

4.01 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I join the noble and learned Lord, Lord Falconer of Thoroton, in congratulating the noble Lord, Lord Dunlop, on his maiden speech and in welcoming him, on behalf of these Benches, to his new position.

I start with two general observations on justice issues. Others on these Benches will speak on devolution and constitutional issues. First, I hope that this Government, now untrammelled by the constraints of coalition with my party, will nevertheless continue to test all their proposals against the fundamental values of human rights and liberty that have, in the past, been championed by both our parties. Secondly, I hope that this Government will maintain a commitment to the rule of law in its widest sense—embracing the concepts that government may not act unlawfully without challenge, that all citizens must have genuine access to justice and that our Government must faithfully abide by all their international obligations. These concepts are easy to state and all too easy for Governments to affirm, but they can nevertheless be challenging for Governments to achieve in practice.

It is against those benchmarks that I approach this Queen's Speech. In the justice area there are several proposals which are to be welcomed. I will mention just four. First, the proposed policing and criminal justice Bill promises that 17 year-olds will be treated as children under all the provisions of the Police and Criminal Evidence Act, bringing English law into line with the UN Convention on the Rights of the Child and the European Convention on Human Rights, and in particular ensuring that 17 year-olds have a legal right to be interviewed in the presence of an appropriate adult.

Secondly, the Government's proposed amendments to the Mental Health Act should end the scandal of patients, often children, who are suffering from serious mental illness being locked up in police custody for want of appropriate places of safety. But if the legislation is to work, the Government must ensure that there are always safe mental health facilities available for emergency admissions, and that these are convenient for patients' homes and families. The Government claim to be serious about giving parity of esteem to mental and physical health. This will be an early test of their resolve.

Thirdly, the proposed end to indefinite pre-charge bail is long overdue and the Government's proposals seem proportionate and humane. The sword of Damocles approach to criminal process is wrong. No one should ever be on police bail indefinitely without charge and without even knowing whether or not they are to be charged.

Fourthly, the Government's promise to continue the reform of the criminal justice system is welcome—if it can be delivered. This means implementing the Leveson review's recent proposals and providing the resources to make them work. But they cannot work if criminal lawyers are demoralised and angry. The previous Lord Chancellor left office with both sides of the profession convinced that a non-lawyer could never do the job of Lord Chancellor. That leaves Mr Gove, as a non-lawyer, with a serious challenge and he will meet it only if he carries the professions with him.

He might start by announcing a full review of criminal legal aid to ensure that the system will sustain a high-quality service that will command public confidence and deliver increased efficiency. For savings in criminal legal aid, he should look first at compulsory legal expenses insurance to cover criminal defence costs for directors of larger companies. He should also ensure that wealthy defendants can use restrained assets to pay their legal costs—a move inexplicably opposed in the previous Parliament by the Home Secretary. These two measures would release substantial sums spent on legal aid in very high-cost cases. In 2013—a relatively low-cost year—they were still less than 1% of the workload but accounted for more than 10% of the costs. The Lord Chancellor should also announce an immediate review of the changes to civil legal aid to see how far they have damaged access to justice and how best to undo such damage.

Like the noble and learned Lord, Lord Falconer, my chief concern for this Parliament is the future of the Human Rights Act and our membership of the European Convention on Human Rights. It is a great relief that the immediate threat to repeal the Human Rights Act has been replaced by a more measured approach but the threat remains. We have been reminded many times that the convention was fostered by Winston Churchill. One of its principal draftsmen was the Conservative lawyer David Maxwell Fyfe—later, as Lord Kilmuir, Lord Chancellor—who was Attorney-General in the wartime coalition and then won distinction for his cross-examination of Hermann Goering at Nuremberg.

[Lord Marks of Henley-on-Thames]

The joint commission established by the coalition Government recommended by a majority that there should be a UK Bill of Rights, which would incorporate and build on convention rights, with possibly some additional rights guaranteed. Attractive possibilities for additional rights would include incorporating the UN Convention on the Rights of the Child and establishing a series of guaranteed digital rights with strong but appropriate protections for online privacy. The commission majority believed that such a Bill would be more in sympathy with British legal traditions and might gain wider public acceptance than the Human Rights Act.

If that is what ultimately comes before Parliament, I would not in principle oppose it, provided that three conditions were met: first, that the UK would remain a member of the convention; secondly, that convention rights would still be justiciable in British courts; and thirdly that the British Government would still regard themselves as bound to comply with decisions of the Strasbourg court. On this last issue, there has been much muddled talk. Article 46.1 of the convention provides:

"The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties".

It follows that we cannot cut the link between the UK and the Strasbourg court without leaving the convention, and that is a course with which I would vehemently disagree. I believe that leaving the convention would set a dreadful precedent for other countries and would undermine the moral case we make for human rights internationally. I note that the Prime Minister appears to be reconsidering the Government's position on the convention. He may be reflecting on the obvious damage to his current difficult negotiations with other EU member states that our threatening to withdraw from the convention would cause. But above all, I believe that we need a commitment to human rights that is anchored in international obligation, which requires respect and compliance from our Government, not just from a possible illiberal future Government but now, from this and all future Governments, of whatever political colour or colours.

I mentioned the welcome proposal to ensure that 17 year-olds are treated as children in the criminal justice system. This reform is a response to the English High Court judgment in the case of HC, in which Lord Justice Moses said:

"It is difficult to imagine a more striking case where the rights of both child and parent under Article 8 are engaged than when a child is in custody on suspicion of committing a serious offence and needs help from someone with whom he is familiar and whom he trusts, in redressing the imbalance between child and authority".

The court found against the Secretary of State on Article 8, the right to family life. We should remember that most cases under the Human Rights Act are decided in British courts by British judges, not by the court in Strasbourg. However, if we had only a British Bill of Rights, the Secretary of State might persuade the Government that the cost of treating 17 year-olds as children, which she assessed as £19-odd million a year, would justify the Government in derogating from the purely British Bill of Rights, which Parliament, at the behest of a majority government, could do. It is our membership of the convention and the fact that the Strasbourg court is there in the background that gives our citizens an international guarantee. I, for one, am not prepared to lose it.

On the more general question of the British Bill of Rights, I found persuasive the arguments of the noble Baroness, Lady Kennedy of The Shaws, and Professor Philippe Sands, who were the minority members on the Commission, that a constitutional convention would be the best forum for discussing the future of human rights legislation in the UK before legislation were enacted. They were particularly influenced by the issues raised by devolution; so should we be. The convention is embedded in the Good Friday agreement. It is incorporated into the devolution settlement with Scotland, and Scotland wants to keep it that way. To interfere with it without Scottish consent would add to the threat to the union, and we should tread with great care. In Wales, the Commission recorded a general view of satisfaction with the Human Rights Act and convention system and the general view that human rights changes ought to be matters for the devolved Governments. Indeed, that issue has not really been resolved at any stage.

The Government have now signalled caution. A constitutional convention would combine caution with the best prospect of consensus and legislation that would command widespread respect. Consensus and widespread respect should be prerequisites for legislation in this crucial but extremely complex area.

4.13 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I, too, congratulate the noble Lord, Lord Dunlop, on his distinguished maiden speech and look forward to the two further maiden speeches that we shall shortly hear.

The gracious Speech promises us new legislation that will, among other things,

"improve the law on policing and criminal justice".

That is obviously a good idea. Indeed, quite a lot in the Government's manifesto commitments seems to me to be sensible. However, I confess to a little unease at the commitment to "increasing sentence lengths" and, more generally, to "toughen sentencing". I find positively disturbing the commitment to,

"continue to review our legal aid systems so that they continue to provide access to justice in an efficient way".

Surely that is a euphemism for slashing the legal aid budget still further, if the past is anything to go by.

I say nothing today on human rights, although I cannot promise to be so forbearing in the future, and that ought not to be taken as any encouragement to the Government to go ahead with their tentative plans.

Nowhere in the manifesto commitments is to be found—it is this that I want to focus on exclusively today—any hint of a suggestion that now, at long last, the Government propose to deal with an ever-worsening stain on the criminal justice system in this country: the continuing incarceration of IPP prisoners; that is, prisoners subject to an indeterminate sentence for the protection of the public. They are detained under

the long-discredited scheme, which was abolished three years ago, that had been introduced by the Labour Government with effect from April 2005.

As many of your Lordships will know, the cause of such prisoners has been championed over many years by the noble and learned Lord, Lord Lloyd of Berwick, who, alas, has just retired from the House. It is imperative that the sorry tale of those prisoners should not now be forgotten, and I want to remind the House today of the vice of leaving the many remaining IPP prisoners indefinitely detained.

It is not even as if primary legislation is necessary to secure their release. In the LASPO Act 2012, the legislation that finally abolished the whole scheme for such indeterminate sentences, express provision was made in Section 128 for the release of existing prisoners. The Lord Chancellor was given explicit power to amend the release test, but, regrettably, the last Lord Chancellor, Mr Grayling, consistently refused to exercise it. It is my fervent hope that the new Lord Chancellor will speedily come to recognise that justice cries out now for him to do so. I should briefly explain the basic scheme and the injustices which arise, particularly acute in the case of those who were sentenced in the first three years of the scheme before it came to be marginally improved in 2008 for its final four years.

As originally enacted, the scheme placed a duty on the court to impose this form of sentence on any offender convicted of a violent or sexual offence—and no fewer than 153 different offences were deemed to fall into that category—who had previously been convicted of a similar such offence. The judge had effectively no discretion whatever in the matter: he was bound to assume that the offender posed a risk of committing a further such offence in future. A prisoner then serving such a sentence could not be released until he later came to satisfy the Parole Board that his detention was no longer necessary for the protection of the public.

At the same time as imposing the IPP sentence, the judge was obliged to state what is called the tariff sentence; that is, the minimum term to be served before the prisoner could in any event be released, the tariff usually being one half of the determinate term judged appropriate as the sentence required to punish him for his wrongdoing. In the first three years of the scheme, the tariff could be, and frequently was, as little as just a very few months.

As I have indicated, in 2008 the scheme was modified in two relevant respects. First, an IPP could not thereafter be imposed except in the case of someone whose tariff term was more than two years. Secondly, the judge was no longer required to assume that the offender posed a risk of future such offending and was allowed to form his own judgment as to that.

Even thus modified, however, the scheme was rightly recognised by the Conservative Government in 2012 to be unfair and unworkable. It had caused thousands of offenders to be given what were effectively life sentences and it was then abolished. However, there remained and there still remain a large number of IPP prisoners, some of whom have now served up to 10 years' incarceration for offences that in themselves may have deserved—and one sees it from their tariffs—a punishment of only a few months. There still remain more than 500 IPP prisoners, detained during the first three years of the scheme, with tariff sentences of under two years, and there are roughly 5,000 such prisoners left in the system as a whole.

This is nothing short of a form of preventive detention or internment, wholly alien and inimical to our entire system and sense of justice and tradition. It is imprisonment not as punishment but purely to protect against the risk that the prisoner may offend again. No doubt if the release test is softened—for example, if the Lord Chancellor were to specify as a new test that these prisoners must be released unless the Parole Board is satisfied that they represent a serious risk of grave offending—some would indeed, on release, then commit further offences. But that, I suggest, is a price we must be prepared to pay to restore a sense of basic justice to the criminal justice system. I ask the noble Lord, Lord Faulks, whose return we all so greatly welcome, whether he will at least agree to bring this question—this scandal, as frankly it is—urgently to the attention of the new Lord Chancellor.

4.21 pm

The Lord Bishop of Leicester: My Lords, as the noble and learned Lord, Lord Falconer, has reminded us, the Prime Minister has offered us what he calls,

"a clear programme for working people, social justice, and bringing our country together—put simply, a One Nation Queen's Speech from a One Nation Government".

It is therefore clearly our responsibility to evaluate the Government's programme against that yardstick, and to measure the gracious Speech on its potential for national unity and social justice, at every point.

I know that today's debate will reveal the breadth and depth of expertise in these matters in your Lordships' House and I look forward especially to the maiden speeches of the noble Lord, Lord Lisvane, and the right reverend Prelate the Bishop of Leeds, whose experience in bringing together the dioceses of Ripon, Bradford and Wakefield makes the constitutional issues facing this House look entirely straightforward.

It is clear that in spite of commitment to one-nation government, there is no longer a national political party that can with credibility claim to be strongly representative of the whole union. The question we shall need to press is whether the proposed package of constitutional reforms hangs together as a coherent entity, rather than looking like a series of patches designed to fix a succession of pressing issues without any clear direction of travel. The constitution, as we know, is a machine with many moving parts and the scale of the challenge here is to recognise that any adjustment to one part affects the whole machine. We must ask if the Scotland Bill, the proposals for English votes for English laws, the Bill of Rights and the Cities and Local Government Devolution Bill are likely, taken together, to enhance our sense of national identity and the functionality of our Parliament.

From these Benches, we pressed some of these questions in our pastoral letter, *Who Is My Neighbour?*, published in February. Without fuller attention to the big question of what we want a future United Kingdom to look like—how much self-government its constituent

[The Lord Bishop of Leicester]
countries ought to enjoy and how they should interconnect with others—then incremental responses to pressing political demands may, contrary to the intention of the Government, edge us towards break-up. That is why I continue to believe that a constitutional convention offers us the best way to consider these large questions in the round, rather than piecemeal. It offers us a reminder that the constitution belongs to us all and not just to the Government of the day. This could be a genuinely one-nation Government's major contribution to our United Kingdom's future.

In the Cities and Local Government Bill there is much to applaud in the plans for increased devolution and the overall aim of boosting growth and employment. Last year in the debate on the Queen's Speech, I mentioned that my conversations in the East Midlands point to a clear consensus that the balance of power between local and central government was not right. Our councils are placed in the impossible position of having to take responsibility for abolishing front-line services, both wanted and needed by our local community. I went on to argue that an erosion of trust and confidence between the electorate and the Government had reached critical level, and that the concept of localism required urgently to be refreshed.

That concept also requires new habits in our town halls and local government structures, new collaboration across boundaries and new partnerships. Noble Lords will forgive me if I mention in passing the re-interment of Richard III as a vivid example of collaboration between city, county, universities and cathedral as a model on which to build for the future. Our own elected city mayor in Leicester has rightly said:

"These proposals make sense in metropolitan areas, but it's important that differences in local political geography are recognised … We already have a directly-elected mayor in Leicester, with a clear mandate—but what's important is that we don't get left out, just because the area around us is more rural than it is in Manchester".

As for English votes for English laws, the need to see the connections between changes is vital. The greater the devolution to Scotland and other parts of the United Kingdom, the more acute the West Lothian question becomes. The Government's proposals raise two immediate questions. Do the arrangements in the other place require to be mirrored in some way in this House, especially at votes at Second Reading? Should Bishops perhaps confine ourselves to English-only issues? Secondly, how do the Government intend to address the challenge already mentioned, of not creating effectively two classes of MP by their proposed changes in the Standing Orders?

As many have observed, there is a clear connection between issues surrounding Scottish independence and the EU referendum. A no vote on the EU would hasten the demise of the Union and lead within a generation to a rump nation shorn of Scotland and of membership of the EU and without strategic influence internationally. The Bill of Rights will surely test the capacity of the Government to demonstrate statesmanship rather than gesture politics and to act in the service and interests of all citizens. In that context, the Children's Society, of which I am a former chair, has said:

"Turning the clock back by scrapping the Human Rights Act would be reckless and threatens to weaken children's rights", dramatically.

"Each year The Children's Society uses the Act to successfully challenge poor treatment of vulnerable children. For example, it protects children by banning men suspected of grooming from contacting girls, and making sure that local authorities which fail to protect children are held to account".

The Prime Minister's commitment to social justice reads directly into any proposals that the Government bring forward in this area.

The same will obviously be true of the proposed changes to the welfare system due to receive your Lordships' attention later this week. If this is to be done in the service of one nation, many questions arise. Is it sensible for the benefits system to continue to subsidise low-paying employers? Does this directly inhibit productivity? Is it not true that strong networks of community and neighbourliness measurably ease the pressure on the welfare system? Is it not therefore imperative that the bedroom tax be abolished since it is contemptuous of communities' and people's need for neighbourliness? Welfare reform needs to address the reconstruction of community if it is to serve a genuinely one-nation programme.

This will be my last parliamentary term before my retirement in July. With others on these Benches, it is an immense privilege to lead the Prayers each day for the uniting and knitting together of all persons and estates within the realm. For that reason, one-nation government will receive the support of this Bench but also consistent challenge where policies fail to address the need for that unity for which we daily pray.

4.30 pm

Lord Mackay of Clashfern (Con): My Lords, it is a great privilege to follow the right reverend Prelate the Bishop of Leicester. I have had the privilege of his company many times and have had much valuable instruction from him. In the diocese of Leicester, he has given tremendous leadership in bringing diverse communities together. I am sorry that the time is approaching when he plans to leave this House, but I am sure he will be a valuable member of the community to which he hopes to go.

I do not propose to follow the comments of the noble and learned Lord, Lord Falconer of Thoroton, about the qualifications of the present Lord Chancellor, except to remark that he had something to do with bringing about the position in which this is possible. Since he has mentioned it, I also take this opportunity to mention what I consider to be the very sad treatment of his immediate predecessor.

My comments on the gracious Speech will be confined to the proposal:

"My Government will bring forward proposals for a British Bill of Rights".

This is an important and difficult subject which has received attention in this House since I joined it. I want briefly to mention the present position: the United Kingdom is bound by the European Convention on Human Rights and certain protocols to a statement of these rights and to implement decisions of the court set up under the convention in cases arising from this country. The noble and learned Lord, Lord Falconer of Thoroton, is not correct in saying that the ultimate decision on cases arising in this country rests with our

Supreme Court. At the moment, it rests with the court in Strasbourg. I shall say something more about that in a minute.

Until the convention was incorporated into our law by the Human Rights Act, the text of the convention was not part of our law, although our courts had regard to it in deciding cases in which it was relevant. With the passing of that Act, the text became part of our law and our courts applied it in deciding cases in which it was relevant. The Act required our courts to have regard to decisions of the court in Strasbourg in reaching such decisions, as the noble and learned Lord said. The Act also conferred on our courts power to declare Acts of our Parliament inconsistent with the convention. The Act did not affect the obligation of the United Kingdom to implement decisions of the Court of Human Rights in Strasbourg, to which I have referred.

This position has now produced a difficult situation. The Strasbourg court has decided that our statute which denies persons serving a prison sentence the right to vote is inconsistent with the convention as supplemented by a protocol. A court in Scotland has declared that the statute is inconsistent with the convention and the Court of Appeal in England has agreed. Taking part in that decision, Lord Justice Laws gave a full account of what Parliament would require to do to implement the Strasbourg court's decision. So far, Parliament has not taken any such action and has indicated no intention of doing so, so the obligation is in suspense in the sense that it has not been complied with. I must confess to a feeling of great anxiety that the United Kingdom, with its tradition for respect of the rule of law, not the rule of lawyers, should be in breach of a treaty by which it is bound.

It has been suggested in some quarters that we should adopt the procedure necessary to free the United Kingdom from its treaty obligation under the convention. That treaty, as was already mentioned by the noble Lord, Lord Marks of Henley-on-Thames, came into existence as the result of the way minorities had been treated in Europe in the preceding years. That treatment had been inflicted with the authority of the elected Government. The United Kingdom took an important part in setting up the treaty and its mechanism of enforcement, and I have little doubt that our leaders of that time were motivated by a concern for the citizens of other countries rather than those of the United Kingdom in particular. It would surely be extremely sad for the United Kingdom to withdraw from a treaty which we took such an active part in setting up with motives of concern for citizens of other states than our own.

I will make a suggestion for a possible way forward. We could seek an amendment to the convention to exempt from the obligation to implement the decision of the Strasbourg court where the court has decided that a statute of a member state contravenes the convention, and in that member state no court of that state has authority to set aside or modify that statute, if the legislature of that member state passes a resolution, which for stated reasons declines to implement the Strasbourg court's decision. If such an amendment could be agreed, I venture to think that the effectiveness of the treaty would not be substantially diminished.

I regard the present situation as extremely unsatisfactory. That would be a possible way of recognising that at least in our country—and maybe in some other member states—the elected Parliament is sovereign and not subject to any kind of quashing order by the courts of this country. That of course has been the situation in our country for a very long time. The courts of our country, including the Supreme Court, have no power to quash or set aside an Act of Parliament. Instead of coming out of the convention altogether there may be something to be said for considering whether the convention should recognise the possibility that in some member states the Parliament is sovereign and not subject to having its Acts set aside or modified by the courts of that country. From that point of view there is something to be said for the view that if the courts of our own country cannot do anything about an Act of Parliament, why should it be so for the European Court of Human Rights?

Of course, the original idea was to seek an enforcement which would override the position of the elected Government, but it may be that nowadays the publicity attended by such a decision of the court in Strasbourg would be sufficient to afford protection for minorities, although so far, in this country at any rate, that particular minority of prisoners serving a sentence has not been protected in the way the court in Strasbourg thinks it should.

The proposal in the gracious Speech is for the preparation of a British human rights Act. So long as that is well done, I see no particular objection to it. The gracious Speech does not propose coming out of the convention on human rights. There have been suggestions of that in other quarters but all that the gracious Speech proposes is the formulation of a British human rights Act.

Difficulties with the Human Rights Act have been expressed in this House from more than one side. I refer in particular to the reference made by the noble and gallant Lord, Lord Craig of Radley, on Thursday to the difficulties in connection with the field of battle, and the application of the Act there. I do not know enough about it to say, but there may be some way in which that modification could be thought of. The idea that the Act would not apply at all would be pretty difficult, but I have certainly heard it said by noble and gallant Lords and noble Lords on other Benches than the Cross Benches that this is a difficult situation. These matters could be dealt with, and I venture to hope that they could be dealt with not in a partisan way but in a way that seeks to get the right solution to a difficult situation, done with deliberation.

This has nothing whatever to do with what I have just been saying, but I believe that the noble and learned Lord, Lord Falconer of Thoroton, may not be correct in his assertion that my noble friend Lord Dunlop, who gave his maiden speech today, had any part in the introduction of the community charge Act in Scotland. I was not a member of the Government at that time because I was on the Bench, but I have a feeling that it may not be a well-founded suggestion, and the noble and learned Lord would not like to be responsible, as a former Lord Chancellor, for making unfounded suggestions.

Lord Falconer of Thoroton: Indeed, if what the noble and learned Lord says is correct, I unreservedly withdraw the allegation, and apologise.

FIFA

Statement

4.42 pm

The Earl of Courtown (Con): My Lords, with the leave of the House I beg to repeat a Statement read earlier by my right honourable friend the Secretary of State for Culture, Media and Sport in the other place.

"Mr Speaker, last Friday FIFA's members had the opportunity to embrace the overwhelming calls for change coming from football fans around the world. They failed to do so. FIFA's support for its discredited president was incredibly disappointing, but it will not have surprised a footballing public who have become increasingly cynical as the allegations of misconduct and malfeasance have piled up. FIFA needs to change, and change now, and I can assure the House that the Government will do everything in their power to help to bring that change about.

I have just spoken to the Football Association chairman, Greg Dyke, and reassured him that we stand behind the FA's efforts to end the culture of kickbacks and corruption that risk ruining international football for a generation. I agreed with him that no options should be ruled out at this stage.

Let me also reiterate the Government's support for the action of the American and Swiss authorities. Earlier today, I spoke with the Attorney-General, and we agreed that the British authorities will offer full co-operation with American and Swiss investigators and that, if any evidence of criminal wrongdoing in the UK emerges, we will fully support the Serious Fraud Office in pursuing those involved.

FIFA's voting system is designed to support the incumbent, and it returned a predictable result, but there is no doubt that what remained of Sepp Blatter's credibility has been utterly destroyed. The mere fact that more than 70 national associations felt able to back a rival candidate shows that momentum against him is building. We must now increase that pressure still further. It is up to everyone who cares about football to use whatever influence they have to make this happen.

I am sure that fans the world over will be increasingly vocal in their condemnation of the Blatter regime, and FIFA's sponsors need to think long and hard about whether they want to be associated with such a discredited and disgraced organisation. For the good of the game, we must work together to bring about change. For the good of the game, it is time for Sepp Blatter to go".

4.44 pm

Lord Collins of Highbury (Lab): My Lords, since we last discussed football in your Lordships' House, we have had bad news and good news. The bad news is that Sepp Blatter was re-elected FIFA president last Friday, albeit, as the noble Earl said, with 70 national associations feeling able to back a rival candidate. The good news is, of course, that on Saturday Arsenal won the FA Cup.

We all have a responsibility to protect our game—government, governing bodies, fans and businesses all have a role. We need to establish common cause and take united action to combat the culture of kickbacks and corruption. Will the Minister therefore support my honourable friend's call in the other place for an urgent summit bringing together the football authorities, British sponsors and broadcasters? Will he also reassure the House that, rather than wait for the banks to investigate any potential misuse of funds, the police authorities will act immediately on the reports we have seen?

The Earl of Courtown: My Lords, I thank the noble Lord for those questions. He wishes the Government to convene a summit. We already have a common position. My right honourable friend the Secretary of State is in constant liaison with Greg Dyke, has spoken to him again today, and will speak again before the end of the week before Greg Dyke goes to Berlin for the football final there and a congress being held by UEFA beforehand. We will continue to work with the sponsors, the home nations' football associations and our counterparts across Europe. I reiterate that our Minister for Sport has written to all her counterparts throughout Europe on this issue.

The noble Lord also mentioned the situation relating to any possible police investigation. As I understand the situation at present, Barclays, Standard Chartered and HSBC are carrying out an internal investigation. However, I also know that the SFO and the FCA will be keeping a very keen eye on what is going on.

Baroness Doocey (LD): My Lords, how do the Government respond to the comments of the FA chairman that while an FA boycott of FIFA might have little impact, a boycott by UEFA—a move he would personally support—would have a real impact? What are the Government doing to try to make this happen? In particular, have they had any discussions with France and Spain, who actually voted for Sepp Blatter's re-election, to try to persuade them to take part in a co-ordinated European boycott?

The Earl of Courtown: My Lords, the noble Baroness mentioned a boycott of FIFA by UEFA and basically called for a possible boycott of FIFA competitions such as the World Cup. This was described as the nuclear option by the Secretary of State last week, and is something that we will, of course, have to keep under review.

Baroness Billingham (Lab): The Achilles heel of FIFA is money. The longer we leave it before we take positive action as a Government, a Chamber and a Parliament, the more the issue will fade away. We ought to call together all the sponsors. They hold the key to this. If the sponsors were to withhold their funding, I assure the Minister that there would be a change of heart immediately. The Government have to take a lead in this. The Minister has already mentioned

this, for which I am grateful, but we must keep the pressure on. Now is the time. Oh yes, and Andy Murray has just won.

The Earl of Courtown: My Lords, the noble Baroness mentioned sponsorship. She is quite right about its importance and about the importance of the supply of money to these organisations. We were very pleased to hear the statement made by Visa in this regard. The sponsors have to be very aware that, if they are not careful, their brands will be tainted by the actions of FIFA.

Lord Stern of Brentford (CB): My Lords, I should declare an interest as I was directly involved with the English bid—a rather good bid, I thought. There is one fundamental point which I hope the Government will press strongly, and that is the importance of the expansion of football in Africa and in Asia. We should not let Sepp Blatter have a monopoly of that issue. It is very important for us to declare our support and, of course, to make the point that the interests of football in Africa and in Asia will be much better served by a clean and honourable FIFA, one without Sepp Blatter.

The Earl of Courtown: My Lords, the noble Lord is quite right. I know only too well from acquaintances of mine in west Africa how important football—particularly European football—is in west Africa, and grass-roots football is so important. We have to find a way of countering the ill effect that FIFA has on this issue.

Lord Cunningham of Felling (Lab): My Lords, as the noble Viscount, Lord Ridley, pointed out to us in a newspaper article today, these problems are not simply related to FIFA; these are prominent problems in international organisations, particularly, I regret to say, in sport but in other areas too. Is it not clear that, whatever action is taken—and I support those Members who say that there must be concerted action, because one-off gestures will have no impact at all—the objective should not simply be the demise of Mr Blatter? We must also work, at the same time, for a constitution for FIFA—a new constitution which is open, transparent and fit for purpose, because clearly the existing one is not.

The Earl of Courtown: My Lords, unfortunately I did not have the pleasure of reading my noble friend's column today. Perhaps I may repeat something that I said on Thursday:

"These revelations have shown how important it is for sports bodies to uphold the highest standards of governance, transparency and accountability".—[*Official Report*, 28/5/15; col. 56.]

That is what it is all about, as I think the noble Lord was saying.

Lord Addington (LD): My Lords, does the noble Earl agree that this demonstrates that government cannot remove itself from these issues to do with worldwide sport and has to remain fully committed? Should that not be a lesson that we learned from the Olympic experience—the fact that Governments are required to make sure that it is done properly? If we try to stand back again, we will merely get the same problems over and over again.

The Earl of Courtown: I think I can agree in part with what the noble Lord, Lord Addington, said. However, it is up to FIFA and UEFA to get their house in order. They run football.

Viscount Ridley (Con): My Lords, to go just a tiny bit further than the noble Lord, Lord Cunningham, went a moment ago, I would add that the problem is confined not just to sport. There seems to be a tendency for supranational organisations all too easily to become fiefs—or fiefdoms; we might get confused with fief and FIFA here, for which I apologise. I know that that is much too big a subject for my noble friend to solve this afternoon. However, there needs to be some way of getting accountability into these supranational organisations. By the way, I am not tarring all of them with this brush; there are, of course, many that are extremely well run. While we are on the subject of sporting news, I understand that rain is still stopping play.

The Earl of Courtown: My Lords, I think that part of my noble friend's question was a little outside this Statement. I should reiterate the point that the noble Baroness, Lady Doocey, and my noble friend Lord Moynihan made on Thursday regarding the Bribery Act. We are looking at this issue. I hope to update those noble Lords by letter and place copies in the Library.

Lord Soley (Lab): Following the preceding exchanges on the international aspect of these organisations, should we not congratulate the United States Department of Justice on the initiative it has taken, while also recognising that Britain, with its remarkable reputation on the rule of law, ought to be up there with it and taking the initiative with some of these other organisations that we are concerned about?

The Earl of Courtown: The noble Lord is quite right that we should congratulate the United States Department of Justice on taking action on offences that took place in America and the Swiss authorities for taking action on offences that took place in Switzerland. In this country we will be watching what happens very closely.

Lord Faulkner of Worcester (Lab): My Lords, it is tempting to wring our hands at the re-election of Mr Blatter, as I think every contributor to this short discussion has done today, and I join them. However, my concern is that once the events of the past few days have passed, Mr Blatter is re-established and the long arm of the law does not catch up with him, things will go on just as they are. In that case, it is very important that the lead that the Minister has taken in this House and the Secretary of State has taken in the other House is followed up. Will he be assured that the Government will have the support of everyone in this

[Lord Faulkner of Worcester]
Chamber if he wishes to take an active part in cleaning up FIFA and in reforming the governance of football more generally?

The Earl of Courtown: My Lords, the noble Lord is right in many ways. My right honourable friend the Secretary of State is taking a lead on this subject and I assure the House that this will not be forgotten.

Queen's Speech

Debate (3rd Day) (Continued)

4.55 pm

Lord Dubs (Lab): My Lords, it seems only a few days ago that at least some of us were busy knocking on doors, delivering leaflets and generally taking part in the election campaign. The contrast between that and today's debate is quite noticeable. All I would say as a result of the election campaign is that there is one bit of legislation that I would dearly like, and that is that no letterbox should be six inches from the ground. Those of us who had to bend down to push through leaflets and got our knuckles torn off by the savage letterboxes that one often finds wish that these things were done differently, and I feel very sorry for the many postmen and postwomen who have to do this daily and not just as part of an election campaign.

Before I get to the heart of what I want to say, I hope that I may be permitted to refer to a matter which is obliquely relevant to what we are about to discuss today. Five years ago the noble Lord, Lord Dobbs, joined the House. That was a welcome addition, even if it meant that there was an additional vote on the Conservative side. However, I was rather slow in realising that there were other aspects of significance to this, and the alarm bells started to ring rather slowly.

One day, soon after the noble Lord arrived in the House, I got a bill from the restaurant here. It was a pretty good meal but one which I had not eaten. Indeed, his bank manager would have been happier about the size of the bill than mine would have been. Certainly, given the success of the various editions of *House of Cards*, on which I congratulate him, I think that he is better able to stand those bills than I am.

But then other things began to happen. I got a phone message to call No. 10 urgently. This occasionally happened under Labour, so I called and rather foolishly gave myself away rather than listen to what was on offer. I hope that the time it took that message to then get to the noble Lord did not in any way jeopardise his career or perhaps lose him a ministerial post. Certainly, that made me think again about what was going on.

Then letters came my way, a room which I had not reserved was booked in my name, and I had letters from Members of this House congratulating me on the way I had handled the EU referendum Bill. I felt that I just could not take credit for that. I think that Labour Party policy is now changing but I did not like the Bill at the time and, certainly, to be given credit for it by several Members of this House was more than I felt I could keep quiet about.

In pondering this, I then came across a little booklet about confusable Peers. It is not for general circulation among Members of this House but is a booklet which the staff, quite properly, use to help them. I do not wish what I have said in any way to be seen as a criticism of the staff of this House. When I was in the Commons, I once was confused with Frank Dobson. Those noble Lords who know him will know that he and I do not look particularly alike. When that was mentioned in the House, we got letters of apology from senior officials. I do not want any apology because this is not about that; I just want to clarify a misunderstanding.

The booklet I got hold of is not about confusing Peers or confused Peers, which of course would be a much thicker volume, but about confusable Peers. It shows pairs, trios or quartets of Peers who can be confused with each other and the noble Lord, Lord Dobbs, and I are included. This interesting little booklet enables staff to differentiate us.

Lord Dobbs (Con): I find the confusion remarkable. After all, my noble near-kinsman is a craggy faced, Czech-born socialist and, quite clearly, I am not. Perhaps I may come to his rescue and settle his qualms. I have taken advice from the Garter Principal King of Arms who says that he can think of only one way of us resolving this confusion; namely, that one of us should become an Earl. I humbly submit myself to my fate.

Lord Dubs: I would rather he took that honour than me. I would have a job explaining that one away but I am grateful to the noble Lord.

Lord Foulkes of Cumnock (Lab): My noble friend's problems are nothing compared with mine. I keep getting invited to meetings of Conservative lawyers for reasons I cannot understand, but they will probably become clear when we come to the reply to this debate.

Lord Ashdown of Norton-sub-Hamdon (LD): I wonder whether the noble Lord finds it as confusing as my case: I keep being asked for very large sums of money on the grounds that I am Lord Ashcroft.

Lord Dubs: I hope that that little interlude has helped many of us to decide where we are and who we are. I would be grateful to the House if it would allow me to intrude on the time a little.

Turning to the substance of the debate, I wish that the Government had found it possible to give time to an assisted dying Bill. I say that because, although it would not normally be done in a Queen's Speech, it certainly seems that this Bill commands widespread public support in the country and it has passed through some of its stages in this House. It therefore would be sensible if the Government would agree to give time for such a Bill to proceed, and to accept the wishes of Members of both this House and the other place, in order to see what the outcome would be.

Many Members have already referred to the Government's proposals on the Bill of Rights. I remember going with the Joint Committee on Human Rights to

a meeting at the Strasbourg court about prisoner voting. The judges said that they were concerned that, if Britain did not adhere to a decision of the European court, it would open the way for countries with terrible records on human rights to say, "If the United Kingdom doesn't adhere to these decisions, why should we?". In a way, that seemed to be a much bigger concern on the part of the judges we met in Strasbourg than the specific issue of prisoner voting. I am rather sorry that we seem to have got caught in this. When the decision was made by the court, several European countries immediately allowed prisoners to have the vote. Of course, it does not mean all prisoners, but some of them.

I was very interested to hear the noble and learned Lord, Lord Mackay of Clashfern, speak a few moments ago. Perhaps he was giving the Government a lifeline. I really want to consider what he said in more detail—I am not a lawyer—to see whether it was a lifeline or a sensible way out of the dilemma. Another problem with the human rights issue is the knock-on effect in Scotland, Wales and above all Northern Ireland, where it is clearly integral to some of the agreements that have taken place. It would be a pity if that delicate balance were to be upset. As I understand it, the matter is devolved in Scotland and Wales and therefore we would have to override a devolved proposal.

As to the votes for life Bill, which has not been referred to, British people who are living abroad at the moment can vote only for 15 years after they have left this country. The Government's intention is to take away that time limit. I regret this. When people have thrown their lot in with another country for many years, they are not well qualified to vote in elections in this country. The decision as to where one lives in the long term is surely a sign of one's commitment to a particular country. I exempt from that people working in the public sector for British embassies and so on, people working abroad for British companies, and people working within the EU. However, why should we throw the right to vote to people who have decided that they do not want to live here any more or pay taxes in this country? It makes no sense.

The gracious Speech did not mention House of Lords reform but at some point we will have to move forward on that. The right answer, which has certainly been suggested on this side of the House, is that there should be a constitutional convention to look at this matter and others to do with devolution to see what needs to be done. I would like to make some progress on that. I know that there is not widespread sympathy in this House for an elected Lords but I am talking about issues which are much wider than elections, including the relationship of this House to the Commons and of Westminster to the devolved assemblies. These matters could all do with being looked at in more detail.

As to voting systems, I have always believed that the link between a Member of Parliament and his or her constituency is particularly important. That is why I thought that AV was as far as one might go. However, I am concerned—this might be another subject for a constitutional convention—about the situation in Scotland, where half the population voted for the SNP and the SNP gained virtually every seat. It is a matter not only of the number of MPs in the Commons but of the relationship between England and Scotland. If Scotland is perceived to be entirely SNP territory because of the way in which the electoral system operates, that is not good for the United Kingdom.

Let me refer briefly to the Northern Ireland Bill and the Stormont House agreement. I broadly welcome the Bill. It is important to look at the past, see what can be done and decide how one can make restitution. The Ballymurphy and Finucane cases have caused particular concern and I wonder whether they will be covered by the new arrangements. It is difficult to open an inquiry into every single tragedy that happened in Northern Ireland, but these two cases cause a great deal of concern and I wonder whether the scope of the proposed Bill will be wide enough to cover them.

I am concerned about some important matters which are not within the scope of today's subjects. I worry about the Bill on trade unions. To make it almost impossible for trade unions to call a strike goes further than in any other democratic country and we should be very careful. I am also worried about the Government's commitment, through legislation, that there should be no increase in income tax, VAT or national insurance. It ties the Government's hands enormously and is not a wise move. If the Government do not want to increase any taxes they just do not increase them. Surely they do not need a Bill to keep to that commitment. As to the HS2 Bill, I picked up in the papers that the new fast train would not go to Scotland. I hope that is not true because we want to increase our links to Scotland, not cut them.

5.09 pm

Lord McNally (LD): My Lords, in intervening in this debate, I must set the context in which I do so. Since March 2014, I have been chairman of the Youth Justice Board for England and Wales. The YJB is an arm's-length body within the Ministry of Justice, responsible for the care of young people aged under 18 who are serving sentences in custody or in the community. We also work actively in programmes aimed at diverting young people from crime, and in promoting the positive resettlement of those who have served their sentence. As chairman, I have a responsibility on behalf of the YJB to advise the Secretary of State on matters pertaining to youth justice, and I will certainly be looking to the wide range of experience in this House to help me in that work.

My term of office lasts until March 2017. Being chair of an arm's-length body does put certain constraints on my political activity. When I was appointed, the Cabinet Office guidance said that I,

"should take a step back from front-line politics".

On hearing this, a cruel friend from my Labour Party days said, "But you did that when you joined the Liberal Democrats". On the contrary—I take pride in the fact that the Liberal Democrats served with distinction on the front line in government between 2010 and 2015. We proved that coalition government could work, and I can say, as one who has worked in and around Whitehall and Westminster for the last 50 years, that it was far less faction ridden and more cohesive than some of the single-party Governments we have

[Lord McNally]
seen over that period. No one was called a bastard; nor was anyone accused of being psychologically flawed. As has been said by others, I think history will be kind to us for what we did and the way we did it.

My old mentor Jim Callaghan always gave the old sailor's advice to those moving on: "Don't distract the man at the wheel and don't spit on the deck". I will try to follow that advice regarding my successor at the MoJ, the noble Lord, Lord Faulks, to whom I send particularly good wishes. However, if I had one piece of valedictory advice it would be this. The gracious Speech indicates the Government's determination to bring the public finances under control and reduce the deficit. For a department not protected by any ring-fencing or election campaign pledges, that means immediate cuts for the MoJ.

One of the most bruising experiences in my own time as a Minister was the negotiations with the Law Society and the Bar Council about legal aid. I urge the Secretary of State to engage in immediate dialogue with the professions, and indeed with the Opposition, to see whether a long-term agreement can be reached on the size and scope of legal aid and the changes needed in the structure of the legal profession.

In the latest edition of *The House* magazine, Andrew Caplen, president of the Law Society, says:

"In these times of austerity, we need parliamentarians and the legal profession to work together to build on what we have and develop a justice system fit for the future".

The Law Society will be working with the new Government and Parliament to make this vision a reality. It will not be easy. Agreement may be very difficult to achieve. But having gone through that period, I say this: unless we try, we will have another five years of trench warfare between the legal professions and the Government. That will not be to the credit of either side.

When I see strikes and walk-outs and members of the legal profession marching outside the Ministry of Justice with placards, I warn them about the credibility of the profession in a difficult time. It is no use everybody coming up with easy solutions. As the Law Society says, this is a time of austerity and the MoJ has a restricted budget; if you want to come up with solutions, come up with practical ones. After all, it was the Labour Party that first cut legal aid; it was the Labour Party that had legal aid cuts in its 2010 manifesto. It does not behove any of us to say, "We're in favour of legal aid and of getting it sensible, but we don't agree with this cut or that cut". Now is the time for some sensible solutions, including from the professions themselves.

I have only one or two other reflections on the gracious Speech. As was said by the noble Lord, Lord Dunlop, and the Prime Minister has made it so, one-nation Toryism is the guideline. So it is ironic that the first programme under that banner calls into question three of one-nation Toryism's greatest achievements. First, it was a Conservative Government who created the BBC as a public service broadcaster committed to informing, educating and entertaining. If you doubt whether anything is at risk with the BBC, I simply ask you to watch "Fox News" for five minutes to realise what is being put at risk. Secondly, it was, as has been said by a number of speakers, a Conservative, David Maxwell Fyfe, urged on by Winston Churchill, who provided the decisive legal input into the European Convention on Human Rights that underpins our Human Rights Act. Thirdly, it was of course a Conservative Government under Ted Heath who negotiated our membership of the European Community and cemented that membership through the creation of a single market under Mrs Thatcher and the signing of the Maastricht treaty by John Major. I wish the Prime Minister well in his attempts to negotiate a new settlement with Europe, and I certainly agree with Chancellor Merkel that where there is a will, there is a way. I welcome the Bill to provide for a referendum before the end of 2017, and I hope that the Government will insert a provision for votes at 16 in that referendum, because if they do not, I suspect that this House will.

As for the Human Rights Act, I welcome the fact that the Government have given time for reflection. The problems caused by the Act are more imaginary than real, and Dominic Grieve is right to warn that withdrawal from the ECHR would inflict reputational as well as legal damage on this country. The Government would do well to look carefully at the suggestion by the noble and learned Lord, Lord Mackay, on whether there is a way forward on this.

On all the three matters I have referred to, things would have been handled differently if the Liberal Democrats had still been in government, but we are not. However, as I have said, mishandled they will imperil some of one-nation Conservatism's finest contributions to our recent history, so flying solo puts added responsibility on the government Benches not to endanger that legacy.

I have a final point, which has come out of the debate. I am so glad that the noble and learned Lord, Lord Brown of Eaton-under-Heywood, has picked up the torch on IPPs. As the Minister who took that legislation through the House, I am absolutely sure in my own mind that Parliament thought it was ending IPPs, and Section 128 of the LASPO Act was there because the Lord Chancellor of the day thought that would be the way to do it. I urge the noble and learned Lord to look again at that freedom because this is not going to go away and, as he has indicated, it is a stain on our reputation and not what Parliament intended.

Other than that, I retreat into this semi-purdah, but with the confidence that, as the excellent speech by my noble friend Lord Marks demonstrated, these Benches will not be silent on these issues.

5.18 pm

Lord Hope of Craighead (CB): My Lords, I congratulate the noble Lord, Lord Dunlop, on his appointment to the House and on his speech, which I welcome. Perhaps I may say before he departs for a moment that I look forward very much to his contribution to our debates on the devolution issues that will be coming before the House in the next few months, especially those affecting Scotland. The reason for that is quite simple. The noble Lord's expertise in this field will be greatly valued. The task of securing,

"a strong and lasting constitutional settlement",

in the interests of the whole of the United Kingdom, to which the gracious Speech refers, will be a formidable one. It will not be easy to reconcile it with the restless demands for more powers to be devolved to Scotland which have been voiced by the third largest party in the other place. Only someone whose roots are as deep-seated in Scotland as his so obviously are can really appreciate the difficulties that a Government in Westminster will face in getting their message across to a suspicious public in Scotland. One cannot ignore the fact that so many voted in favour of a party whose ultimate aim is diametrically opposed to the lasting settlement that the Government seek to achieve.

There are of course many people in Scotland—the majority, indeed, as the result of the referendum showed—who support the one-nation approach. They very much wish to see the bringing together of the different parts of our country in the way the gracious Speech refers to, not just by promoting economic stability in the interests of all sections of society but by achieving a constitutional settlement which will be as strong and lasting as such a thing can ever be in a modern, socially aware democracy. But a very large question mark hangs over this declaration of the Government's policy. How is this to be done? How are the people of Scotland, on whose views the holding together of the union will ultimately depend, to be persuaded that the Government's policy is the right one? How are they to be persuaded that the recommendations of the Smith commission are being honoured in full when the Scottish National Party continues to assert that they are not? For my part, I do not think that legislation alone is the answer. Something more needs to be done, and I look forward very much to the efforts that the noble Lord will undoubtedly make in getting the message across.

Of course, this is not the time to look in detail at the Scotland Bill which has just been introduced in the House of Commons. At first glance, it is an impressive piece of work, extending to 64 clauses and two schedules. It will require a great deal of detailed scrutiny if everyone is to be satisfied that it gives full effect to the agreement set out in the Smith commission's report. Of course, much of that scrutiny will take place in this House, as that is the way this Parliament works. I cannot help thinking therefore—the noble Lord touched on this point in his speech—that it is a pity that the SNP has set its face against nominating members of the party to sit here in this House. As the noble Lord knows only too well in view of the criticisms that were made of his appointment—I am not referring to the matter than the noble and learned Lord, Lord Falconer of Thoroton, referred to, but to a quite different point—opposition to the House of Lords is one of the SNP's great remaining totems, as one commentator put it in a Sunday newspaper a few days ago. Reports by the House's Constitution Committee, so ably chaired by the noble Lord, Lord Lang of Monkton, are routinely rubbished by the party's propaganda machine, simply on the ground that this House is made up of Peers who are not elected. The simple fact is that they see this House as an affront to democracy. However, the fact is that this House exists and it does much valuable work. If the SNP wishes to make a serious contribution to what is being done in this Parliament as a whole, and to the scrutiny of this Bill in particular, has the time not come for it to think again—to follow the words of the famous song which is sung at rugby matches? Has the time not come for it to study what the House really does and to appreciate that the party needs to contribute to what goes on here if the arguments that it wishes to put forward are to be considered in detail, as they no doubt deserve to be?

That brings me to the other point, the proposal for a British Bill of Rights. There are many reasons for expressing concern about this idea, as well as grounds for relief that the Government have decided to refrain from legislating until further work has been done. I would simply make two points. The first is how one is to address the question of whether the enactment of a British Bill of Rights would be compatible with the devolution settlements with Scotland, Wales and Northern Ireland. I took part in a debate on the devolution statutes, a couple of decades ago I think. When legislative and executive power was being devolved, I recall that great care was taken to prohibit the devolved institutions from legislating or exercising functions in a way that was incompatible with the convention rights or with Community law. As I understood it, the reason was that it was thought necessary that this country should adhere to the treaty obligations in these two respects. Those obligations include, as the noble and learned Lord, Lord Mackay of Clashfern mentioned, the obligation under Article 46 of the European convention to abide by the final judgment of the European Court in any case to which this country is a party. It was thought, quite simply, that it was the responsibility of this Parliament to ensure that these obligations were respected in full when devolving legislative and executive power to others. One cannot be surprised about the opposition that is being voiced by the party in Scotland to the idea that the Human Rights Act should be departed from.

There is a real question here which I would like to draw attention to. It is being suggested in some quarters that the Scottish Parliament will have a veto on any alteration of the Human Rights Act as it affects Scotland under the Sewel convention, which is to be made formally part of legislation by the Scotland Bill. For my part, I rather doubt whether that argument is sound because the two crucial sections—Sections 29 and 57—which contain the prohibitions are not devolved. There is nothing, I think, in the Scotland Bill that is to come before us which will devolve those crucial sections either. As I understand the structure of the Act, those sections are deliberately reserved matters that are in the hands of this Parliament. I think that the argument that there is a veto in the hands of the Scottish Parliament is misconceived but that is merely my opinion and I ask the Minister to pay careful attention to this because there will certainly be a challenge when the point comes, if it is to come.

The other point is that I suggest that the Government need to recognise the extent to which the convention rights are so deeply embedded in our law as a result of decisions taken both by this House in its judicial capacity and by the United Kingdom Supreme Court since those days. Respect for those rights is firmly established in our jurisprudence and all the comparative work that has gone into it. To get rid of all of that is

[Lord Hope of Craighead]
rather like trying to get rid of Japanese knotweed, which we hear about at Question Time. It will be as difficult and therefore one does wonder whether all the effort that is going into this is really worth it. I rather support the point made by the noble Lord, Lord McNally, that once one recognises the reality and also respects the convention, which I understand the Prime Minister now to favour, the problems are more imaginary than real, and one should be real about it and address the issue in that way.

5.26 pm

Lord Forsyth of Drumlean (Con): My Lords, it is a great pleasure to take part in this debate. I know the convention is that we should not repeat congratulations on maiden speeches but I would like to congratulate my noble friend Lord Dunlop on his appointment; on choosing to make this debate a maiden speech, which made it impossible for me to intervene on his speech; and for slipping out of the Chamber when I was about to have a second go. He has clearly learnt the ways of this House very quickly.

It is no exaggeration to say that there has been a revolution in Scotland. I am slightly surprised that it was quite late in the debate this afternoon—and I agree with everything that the noble and learned Lord, Lord Hope, had to say—before we actually mentioned the fact that the Scottish nationalists, who wish to break up Britain, have won 56 out of 59 seats in Scotland. When I was in government, we used to say, "If the SNP wins a majority of seats in Scotland, it can have independence". Thank God we had a referendum last year in which the majority of people made it clear that they did not want that to happen.

I believe that there is a real crisis in Scotland. In Scotland, where I live, we are now a one-party state. Not content with winning 56 seats, the nationalists are now trying to drive the last remaining Liberal—not even on the mainland—out of office. Their behaviour in the referendum campaign, in the election campaign and subsequently of intimidation and everything else means that those people—the majority—who wish to be part of the United Kingdom look to this Parliament to offer a way forward. Most people in Scotland now believe that the union hangs by a thread.

With its 56 MPs, the SNP has enormous resources. I am told they have all signed some undertaking not to criticise any member of their Front Bench or say anything in public that contradicts the policy of their Front Bench. I hope this does not give David Cameron any ideas; otherwise, I shall be silenced for life. It is an extraordinary thing. They came to this House on the day of the Queen's Speech all wearing white roses. The white rose is certainly mentioned by MacDiarmid but the white rose is a symbol of the Jacobites, and the Tory party, Scotland's oldest political party, was a Jacobite party. Not content with seizing my national flag, the SNP now wants to seize the emblem of the origins of the Conservative Party. It seems to me that this demands a response, and business as usual is not an appropriate response. Yes, I believe in one-nation Toryism, but we are not one nation—we are a United Kingdom made up of a number of nations and there is now a crisis.

Every unionist party in Scotland has suffered. The Labour Party has suffered the most and the most quickly. I have to say that I sympathise, as a unionist, but do not sympathise, because the Labour Party has been the architect of its own destruction in Scotland. For years, its members demonised the Conservatives using the language of nationalism. They said that we had no mandate because we did not have a majority of the MPs in Scotland. They claimed that, under a Conservative Government under Mrs Thatcher, we destroyed the industrial base and gave Scotland a lousy deal, even though the Barnett formula gave to Scotland 25% more per head in expenditure than in the rest of the United Kingdom. They talked about our education reforms as the Anglicisation of education in Scotland. When I left office as Secretary of State, among pupils of school-leaving age in Scotland, 10% more got five decent passes than in England. Today, the position is exactly reversed and England is 10% better off. That is because Scotland, under these Scottish nationalists and under Labour, refused to follow the reforming policies in education that were carried out here. The point is that those policies were not argued against on their merits but presented as the Anglicisation of education. Even quite recently, Labour MSPs referred to their colleagues down here as "Westminster Labour". It seems to me that if you use that kind of language and tell the Scottish people that they are getting a bad deal from Westminster, you should not be surprised when, one day, having ridden that tiger, it turns round and devours you. That is what happened to the Labour Party in the most recent general election.

Alex Salmond and I were both against devolution and the Scottish Parliament. I was against it because I thought that it would lead to a platform for the SNP from which it would demand more and more powers and eventually break the United Kingdom. Alex Salmond was against it because he agreed with Tony Blair and George Robertson. The noble Lord, Lord Robertson, is not in his place, but I do not need to remind the House that he said:

> "Devolution will kill nationalism stone dead".

Well, he was half right. He got the verb right, it was just the wrong party.

It is a fact that we now have a new situation in Scotland and I believe that that new dimension requires a new model. Simply to say that we will implement the proposals of the Smith commission will not work. All the unionist parties stood on a platform of bringing in the proposals of the Smith commission and we ended up with three seats out of 59. This is not a credible position; it has been rejected. In my view, the proposals were always half-baked, not properly thought through, conceived in haste and part of a deal negotiated by politicians from which the whole of Parliament was excluded and given no opportunity to take part in the formulation of these policies. Indeed, Alistair Darling, who did such a brilliant job in the referendum campaign and who I very much hope may well come to this House, was quoted as saying that Smith has been overtaken by events, is lopsided, unfair to England and threatening to the union when combined with English votes for English laws.

It is a matter for the House of Commons, but I am not very keen on English votes for English laws by amending the Standing Orders of the House of Commons. Parliament spent a good 35 years arguing about the best way of dealing with the question of home rule in the context of the Irish question at the end of the 19th century and the beginning of the 20th century. It concluded that reducing the number of MPs from Ireland was the correct solution so as not to have two classes of MP. I believe that that was the right approach.

How is this going to play in Scotland? If, as we are apparently committed, we keep the Barnett formula, the Scottish nationalist Members who represent Scotland will be able to say, "We are being disfranchised; we are not being allowed to vote on matters that affect Scotland", because the Barnett formula translates policy decisions in education, health and other devolved matters into revenue for the Scottish Parliament. Therefore, to say that we want English votes for English laws, and at the same time retain Barnett, is to give the SNP a stick with which to beat the union and this Parliament. The answer is to have a funding formula that is based on need. That would mean, of course, that Scotland would lose out, so there needs to be some transitional arrangements for the funding that was recommended by the committee of the House on the Barnett formula, on which my noble friend and I served. That needs to be discussed.

Then, we have the extraordinary situation that Nicola Sturgeon—who, by the way, was not even a candidate in this election but seemed to dominate it—has said that she wants fiscal autonomy. Fiscal autonomy would be an absolute disaster for Scotland and result in a reduction in the budget. Even if it got all the North Sea oil revenues, it would result in a reduction in the budget equivalent to half the health spending in Scotland, and they know it. Suddenly, the party that told us that it could have independence in 18 months is now telling us that fiscal autonomy will take six years. Why would that be? It is hoping that something will turn up. It is hoping that the oil price will turn up. Alex Salmond is a gambler and he is gambling the future of every citizen in Scotland on something turning up and is presenting a dishonest portfolio, as the party did in the election.

In *Alice in Wonderland*, the queen said that she can believe six impossible things before breakfast. Nicola Sturgeon believes two impossible things: that she can end austerity and spend more money and, at the same time, have fiscal autonomy in a country where the tax base is lower than in England, where expenditure is 20% higher than in England, which means that there is a gap, and where borrowing would have to be controlled by the United Kingdom. My advice to our Front Bench is this: please publish a White Paper setting out what the consequences of fiscal autonomy would be for Scotland so people can see what it is that they voted for, because the SNP certainly did not tell them what they voted for.

Unless we can persuade people in Scotland that they add an enormous amount to this United Kingdom and that this United Kingdom provides support to people throughout Scotland on the principles of solidarity that have governed our union for more than 100 years, we may very well find that we see the union being broken. It would be a very sad day indeed if our United Kingdom should be broken by people whose primary purpose is to divide our nation, mislead the voters and try to substitute for the politics of class those of identity. That is what they are doing. In doing so, they are bringing on board a whole range of people with left-wing, extremist ideas, which, if implemented, would be disastrous for Scotland and disastrous for the United Kingdom.

I hope that in the passage of the Bill on Scotland we will have an opportunity to rethink our position and accept that we cannot have constitutional change implemented unilaterally. We need to have all-party agreement. I very much agree with the proposals that have been supported by the Labour Party and the Liberal party for a constitutional convention to sort these matters out so that these things can be looked at on an all-party basis and not on the basis of piecemeal, asymmetric, partisan, political advantage, which has brought us to this pretty place today and was predicted by our party when the Labour Party first embarked on devolution.

5.39 pm

Baroness Hayter of Kentish Town (Lab): My Lords, for the two Bills on which I will lead for the Opposition —on charities and to create a public service ombudsman —I have nothing but praise, albeit we may want to strengthen them just a little. Had the Government's programme stopped there, I would have had no complaint. However, while respecting the fact that the electorate chose a Conservative Government, there will be some unforeseen circumstances, which we will seek to mitigate. We will in particular seek to protect the rights of others in the way outlined by my noble and learned friend Lord Falconer.

But there are other important issues, such as the extension of the right to buy to housing association tenants. We will examine the rights of this carefully. The housing Bill will force councils to sell their most expensive—in other words, their best—housing when vacant, and to use the proceeds to compensate housing associations for the loss of their stock, as well as to build new affordable homes in the same area. However, where housing and land costs are astronomically high, such as in Kentish Town in Camden, this will accelerate the emptying out of London's poor from inner London areas which started in the last Parliament—and, incidentally, where sold-off council properties are back on the market at £800,000, or at three-times affordable rents. Kentish Town did not vote Tory on 7 May, but will have to live with the consequences of other people's choices. Indeed, this Government could seriously damage Camden. The housing Bill could force it to sell a third of its social housing and to undermine its community investment programme of building 1,400 new homes. Land is simply not available there at affordable prices to rebuild unit for unit sold.

The National Housing Federation has said that extending the right to buy to housing association tenants, funded by selling off high-value council homes, will deepen the current housing crisis. We look forward to the maiden speech tomorrow of the noble Lord,

[Baroness Hayter of Kentish Town]
Lord Kerslake, on this very issue. Housing associations fear that the proposals will undermine their wider aim: to provide affordable tenancies for the less well-off or low-rent provision for the homeless, as is recognised in the charities and social investment Bill that the Government published last week. It could even undermine therapeutic communities or sheltered accommodation.

It has also been said that the proposals will undermine the ability of housing associations to build affordable homes in the future. A number of issues have been raised with regard to the legality of interfering in this way with the assets of what are after all independent charities. All such criticisms we will address during the passage of the Bill. The last Parliament was bad enough for charities, gagging them with the lobbying Bill while completely failing to deal with corporate lobbying. Now we see the state interfering in charities' provision, allocation and funding of housing.

Meanwhile, the state is interfering with independent trade unions, forcing them, as did the Government's predecessors in the 19th and 20th centuries, to change their rules, deliberately so as to undermine Labour Party funding. A similar provision in the 1927 trade union Act resulted in a fall in the number of political levy payers from 3.5 million to 2 million and a drop in party income of 20%. The equivalent this time could be much more. It is what the *Independent* reported as a "shamelessly partisan" attack on Labour. This is simply to deal with payments of 5p or 10p a week by trade unionists. For that, we will have to set up the operation for them to be able to opt in. All this will happen while companies will be free to make large political donations without any reference to their employees, their customers or their shareholders. We have seen how much the Tories benefit from such largesse. In the last Parliament, they raised £108 million, with £28 million from hedge funds alone. David Cameron used to say, and I approved, that he wanted to end the "big donor culture". But with this gracious Speech, we have seen the truth: we will continue to allow big donors to his party but clamp down on those tiny weekly contributions made by millions of trade unions to our party.

As my noble friend Lord Dubs said, the votes for life Bill will end the 15-year rule, allowing millions of Britons overseas, including tax exiles, to vote in UK elections, but perhaps the Tories' real aim is to allow those people to donate to UK political parties, meaning more rich pickings from non-taxpaying expats.

There is also in the gracious Speech the threat to the independence of the BBC, which stands for free speech and professional, unafraid journalism here and across the world, by the possible undermining of its funding model or finances.

This sounds like an illiberal, politically motivated Government interfering with the legitimate activities of unions, charities and housing associations while extending potential Tory funding from expats. It is not a one-nation gracious Speech; it is not a programme based on rights, on fairness, on equality or on any sort of social justice. It is partisan and mean-minded. It cuts billions from benefits to needy families while ensuring that the Tories' own income is secure. This is not the gracious Speech that we anticipated.

5.46 pm

Lord Selkirk of Douglas (Con): My Lords, I very much enjoyed the speech just made by the noble Baroness and found it very interesting. I also very much congratulate the new Minister, the noble Lord, Lord Dunlop, on his considerable speech, which was very wide-ranging and effective. I look forward to many more contributions from him in the future.

I declare a past interest as an elected Member of the Scottish Parliament during its first eight years. I also served on the Calman commission, whose recommendations in relation to new powers for the Scottish Parliament have now been largely implemented. Those were to some extent overtaken by events such as the referendum. Unfortunately, the noble Baroness, Lady Goldie, cannot be with us today on account of parliamentary duties elsewhere. That leaves me as the sole Tory Peer present who has served as an MSP. We should not forget that there is a group of some 15 Tory Members in the Scottish Parliament and I suggest that they may have an influence that exceeds their numbers.

I support the Government's new Scotland Bill. We should proceed to enact into law the new raft of powers proposed by the Smith commission. As Disraeli once remarked, and he had a good point:

> "I am a Conservative to preserve all that is good in our constitution, a Radical to remove all that is bad".

As well as supporting the Scotland Bill, surely it is time to take a step back to look at the future of the 300 year-old union, which is a successful partnership that so many of us value, including, we should always remember, a decisive majority of Scottish electors in last year's referendum. Perhaps a commission with representatives from all parts of the United Kingdom could make a valuable contribution for the future in this regard and be a good way forward.

The Prime Minister has promised to look at proposals from the SNP to go beyond the Smith commission, but we cannot ignore the impact which greater devolution to Scotland and to Wales and Northern Ireland is having on the structure and government of the whole of the United Kingdom. The principles of equity and accountability are both extremely important.

Professor Adam Tomkins, who was a member of the Smith commission and was recently invited to advise the Secretary of State for Scotland, is calling for a new Act of Union. That might be a vital component of the way forward in protecting and securing the United Kingdom. It could, for example, clearly set out on strong foundations the parameters of the relationship between central government and the devolved Governments. The West Lothian question can surely be dealt with by the House of Commons in a way that is both fair and sensitive to the wishes of the people of England as well as to the wider union. The Prime Minister's proposal concerning the use of Standing Orders will be a matter primarily for the other House.

Now I come to the SNP's latest goal of full fiscal autonomy, which the independent Institute for Fiscal Studies calculated would have left a huge £7.6 billion black hole in the Scottish Government's budget this year. It is forecast to rise to £9.7 billion by 2020, according to the Institute for Fiscal Studies. I certainly would not wish an elephant trap of that nature to be

set in the path of the Scottish people. Such a move would seriously damage the benefits that Scotland receives from the pooled resources of the United Kingdom, and I am very pleased that the Scottish Secretary is considering asking for a detailed report on what this kind of maximalist devolution would mean for the Scottish economy. The noble Lord, Lord Forsyth of Drumlean, made a strong call for a White Paper. That could well be a solution to this matter.

It is absolutely essential that every elector in Scotland knows what impact full fiscal autonomy would have on the country's finances. I am well aware that the Prime Minister said in the Queen's Speech debate that he was clear what full fiscal autonomy meant. He said:

"it means raising 100% of what it spends. That means asking Scottish people to pay almost an extra £10 billion in taxes or making almost an extra £10 billion in … cuts by the end of this Parliament".—[*Official Report*, Commons, 27/5/15; cols. 51-52.]

Even the SNP shows signs of moving away from this policy, but it was a very large issue in the Scottish referendum and during the recent elections. The Government and the Prime Minister are right to take it seriously.

I do not believe for a single moment that Scotland is set on an inevitable road to independence. I am most certainly not prepared to give up on our union with the rest of the United Kingdom, which with the necessary reforms can be both resilient and durable. Let us never forget that the union is a voluntary partnership of different nations. By all means let us make sure that Scotland gets additional powers that it was promised before the referendum, but even more importantly let us apply ourselves to the need to draw up a new constitutional settlement that above all will be fair to all parts of the United Kingdom.

5.52 pm

Lord McFall of Alcluith (Lab): My Lords, this will be a Parliament dominated by constitutional issues: the Scottish question, the European question and that of human rights. A casual approach to any of these could fatally undermine the union. If we are to learn anything from the situation in Scotland, it is that a sloppy approach from Westminster has resulted in a badly destabilised union, to the extent that the question we face today is: can the centre hold? Some would say that it is too late—that there comes a time when the decay of the political parties inevitably is followed by the decay of the power structures in which they function. We have to accept that in Scotland, the SNP largely has both the momentum and the trust of the Scottish electorate—so, as the noble Lord, Lord Forsyth, says, this is a precarious situation for the union. However, there is not an inevitability regarding independence.

In my anecdotal evidence from going around for the general election, I remember knocking on a door and saying to the woman that I was calling on behalf of the Labour Party. She said, "Oh, son"—by the way, that was the first compliment I got and I was happy to receive it—"we used to be Labour but the whole household, half a dozen of us, is now SNP. We're going to give them a chance and I think that Nicola deserves as good a chance to get into 10 Downing Street as any of the others". The unreality of the situation in Scotland hit me right in the face as a result of that. We—I speak here as the Labour Party, but it must apply to other opposition parties—have lost the capacity to converse with the electorate in Scotland. Permission for us to engage was denied by the electorate. From the Labour Party point of view, we have a cultural problem to resolve about how the party speaks and the way that it pitches its appeal to the electorate in Scotland. I guess that that goes for other opposition parties as well.

Despite the SNP being full of contradictions, its voice is dominant in Scotland. But let us not forget that 50% of the electorate there voted for the SNP and it secured 56 seats, while 50% of the electorate in Scotland voted for those parties that support the union and we have three seats. It is a very divided country but all is not lost. There is still a substantial majority in Scotland in favour of the union, yet we must address a number of important issues if we want to preserve it.

First, we need a serious, considered and engaging approach by the UK Government and the Westminster body politic. We should never repeat the folly of having a two and a half year referendum campaign without a backward glance, and allowing the positive case—yes—to be made for separation. We need to have a positive narrative for the union—not just something in the negative sense—and it has to be made robustly here.

Secondly, the UK Government need a single-focus devolution mechanism to replace the present fragmented structure, where there are six separate Whitehall centres for devolution policy. We have three Secretaries of State, the Department for Communities and Local Government, the constitutional group of the Cabinet Office and the Treasury's devolution team. It is a recipe for disaster. The Labour Government, during their time in office, considered a Secretary of State for the nations and regions. They ducked that but it is time for the Government to look at that issue again.

The third issue is civic engagement across the entire countries and regions of the UK. Accompanying that there must be a structural road map to progress constitutional development. As others have said here, devolution policy has been ad hoc, piecemeal and rushed to the point of recklessness. Last Thursday, the Scotland Bill was published, based on the Smith recommendations. The core basis of this agreement has to be implemented. It was endorsed unanimously by all Scottish parties but it is clear that proposing further powers for Scotland creates a need to satisfy the desire for further devolution in England and Wales, and for the political reform of this Parliament. So there is an overwhelming case for a proper constitutional convention to examine carefully, and for the first time, UK-wide devolution implications.

The work of the former Political and Constitutional Reform Committee in the other place on a new Magna Carta points a way to options for reform. However, as one who was involved in the Scottish Constitutional Convention preceding the Scotland Act 1998, I say that it represented the best template for a constitutional convention. It brought together Labour, the Liberal Democrats, the Green Party, local authorities, the Scottish Trades Union Congress, the churches, the

[Lord McFall of Alcluith]
Federation of Small Businesses, ethnic minority representatives and the Scottish Women's Development Forum. The only one absent from it was the Scottish National Party—and, sadly, it has thrived as a result. But that broad-based participation resulted in a report that formed the basis of the 1997 Labour Government White Paper, *Scotland's Parliament*. The Scottish Constitutional Convention was very successful. It had a defined remit and covered all the angles which a proposal for a Parliament needed.

Lord Forsyth of Drumlean: While agreeing with the noble Lord on the need to have some sort of constitutional convention, surely he is not arguing that the asymmetric devolution which resulted in Scotland has led to success. It has led to the disastrous position that we are in now.

Lord McFall of Alcluith: The noble Lord always likes to look backwards. I am not going to engage in looking backwards. He should work with me and others to ensure we are forward looking, given that his speech said that the union is in a perilous state. I am sure that he will agree with that, so let us move on and be positive; let us not be negative.

Any idea that the latest round will provide an enduring settlement is illusory. If we are to achieve a proper balance, it will take a long time. That is why a constitutional convention representing the peoples of all parts of the United Kingdom is important. In that convention, a legitimate question will be: how much further can the UK go and remain stable? Is it the intention to maintain the political, social and economic union? If so, there is tricky terrain for us there, not least in the areas of tax, welfare and pensions.

The general election answered the question, "Who is to govern the United Kingdom for the next five years?", but left open the question of whether there will still be a UK to be governed. If we do not realise the gravity of the constitutional situation facing the UK and do not adopt a serious, coherent, all-embracing, long-term approach, perhaps in five years there will not be a UK to be governed. That would be a tragedy for all the people of these islands, and we must do our best to ensure that it is not the case.

6 pm

Lord Thomas of Gresford (LD): My Lords, in a debate in the other place shortly after the European convention was signed in October 1950, the Conservative spokesman, Duncan Sandys, son-in-law to Winston Churchill, welcomed the convention as a binding treaty, fashioned as it had been, as other speakers have noted, by Sir David Maxwell Fyfe, later Lord Kilmuir. He said that it imposed a common obligation,

"on all the signatory States, to assure to their citizens the rights which it contains. What perhaps is the most novel and important feature of this Convention is … the setting up of a European Court of Human Rights, to which cases … can be referred for adjudication".

He added:

"It is rare for a democracy to be overthrown in one single sweep. There is almost always a twilight period, during which human rights and civil liberties are being progressively curtailed and undermined. It is in this critical stage that the publication of the proceedings and the judgments of the Court might very well have a decisive influence".—[*Official Report*, Commons, 13/11/1950; cols. 1412-13.]

Emrys Roberts, the Liberal MP for Merioneth, whom I later came to know well, said that the rise of fascism in Italy and Spain and the aggression of Nazi Germany might have been prevented if the human rights contained in the convention could have been guaranteed by all the states of Europe. As the noble and learned Lord, Lord Mackay of Clashfern, said, that was the context in which the convention came into being. Mr Roberts said:

"Every State that refuses to sign the Convention on Human Rights will stand condemned in the eyes of the public of Europe".—[*Official Report*, Commons, 13/11/1950; col. 1468.]

As it turns out, the convention and the court have been great successes. In my own field of law, military justice, the successive decisions of the European Court of Human Rights in the 1990s were the decisive influence in causing this Parliament radically to reform the military justice system so as to bring it into line with modern standards of justice. It is dismaying to hear suggestions that the military should be excluded from the protection of the convention, not just for themselves but for the people who may be in their custody. That was an issue that was very live during the second war in Iraq.

The right-wing press with which we are blessed seem incapable of grasping that the European Court of Human Rights is not an offshoot of their hated European Union, and has no power to bind our Supreme Court or to enforce its decisions. Putting aside these misconceptions, it is necessary to grapple with the arguments put forward by the serious proponents of a British Bill, the two junior Ministers now at the Ministry of Justice, Mr Dominic Raab and the noble Lord, Lord Faulks.

First, they are right to argue that some of the judges of the present court lack weight and experience and to point to the huge backlog of cases, but these are questions that have already been addressed. The Brighton declaration in 2012, following the high-level conference under the chairmanship of the UK, called for the court to concentrate on the most serious violations of human rights, for the amending of the convention to enable trivial cases to be thrown out at an early stage and for the continued refinement of the process of selecting judges. The answer is not to remove from the European court the highly experienced and competent British judges but to demand a better system of appointment from other member countries. Perhaps the noble Lord, Lord Faulks, could enlighten us as to how far the Brighton declaration is being followed up.

Secondly, the noble Lord and Mr Raab argue that the European court has extended its remit with a degree of judicial creativity and activism that is unacceptable. They cite in particular the issue of prisoner voting. They regard such a question as falling well within the margin of appreciation that should be accorded to a democratic national order governed by the rule of law. However, that means we stand next to Austria, Bulgaria, Estonia, Georgia, Hungary and Russia; of the 47 countries in the Council of Europe, those are the only ones that have a total ban on prisoner voting, and they are not

perhaps the most progressive regimes. Enlightened opinion on this side of the House believes that, as in other major European countries such as France and Germany, it is in the public interest to help to rehabilitate those prisoners who are serving small or medium-term sentences by giving them a stake in the political process. I was interested in the possible solution to the impasse suggested by the noble and learned Lord, Lord Mackay, and no doubt that will be followed up.

A third area of criticism is the question of deportation. Here the argument is that the British courts have pre-empted decisions in Strasbourg by allowing prisoners to resist deportation on the grounds that their rights to a family life under Article 8 of the convention would be breached. Yet in the case of RB (Algeria) in 2009 the noble and learned Lord, Lord Hope, stated that he could find no Strasbourg case where deportation had been overruled on human rights grounds other than under Articles 2 or 3—that is, a risk to life or the possibility of torture. Preventing deportation under Article 8—a risk to family life—is a British-made law. In an individual case, it may indeed be a merciful and just decision. My noble friend Lord Marks was right to point out that most of the decisions that attract such awful publicity are decisions not by the European court in Strasbourg but by courts in this country, upheld very frequently in the Supreme Court.

However, I suggest that the criticisms from the noble Lord and Mr Raab pale into insignificance when compared with the real gains that the convention has meant for the vulnerable in our society. Decisions have led to the protection of people against state power and led to changes in the law and in regulations concerning care homes, child victims of abuse and trafficking, women subject to domestic and sexual violence, those with disabilities and victims of crime.

Today the press have suggested that the Prime Minister is at odds with Mrs May and Mr Gove on the issue of withdrawal from the convention. Good. The shades of Duncan Sandys and Lord Kilmuir will doubtless applaud him, and I am sure that he will have the full support of this House. This is a particular issue where the ancient Salisbury convention, which was invented for another time and another constitution of this House, surely cannot have effect. This House will say no.

6.10 pm

Lord Mackay of Drumadoon (CB): My Lords, I rise to make a short contribution to this important debate on the Motion that an humble Address be presented to Her Majesty. I begin by congratulating the noble Lord, Lord Dunlop, on an outstanding maiden speech which will be remembered throughout the legislation which is to follow in the light of the lodging of the Bill in the other place last week.

I have reached the view that, as a lot of what I would like to have said has already been touched on, I should keep my remarks brief. I am also conscious of the fact that a number of retired judges have already spoken and have dealt with issues which I might have said something about. I wish to stress that ever since devolution came along after the 1998 Act the people of Scotland have taken a great interest in political matters and constitutional arrangements. I am sure I am not the only lawyer present who remembers a time when constitutional law was restricted to being the subject matter of lectures addressed to undergraduates in law school. How matters have changed. Now it is quite clear from everyday life that a majority of people in Scotland have an interest in constitutional arrangements relating to Scotland benefiting from devolved powers. That interest encompasses talking about the possibility of a further referendum about independence in the not-too-distant future and generally about the relationship between Scotland and the rest of the United Kingdom.

On 18 September 2014, almost 85% of those registered to vote in Scotland took part in the referendum on independence for Scotland. During the months preceding that referendum, an increasing number of the residents of Scotland began to take a greater interest in the constitutional arrangements within the United Kingdom and the consequences to which devolving further powers to the Scottish Government and the Scottish Parliament might lead. Following the referendum, such interest has continued, with the no vote and the yes vote having conflicting interests in it. This has been illustrated by the number of television debates addressing some of the matters in dispute and, in the weeks leading up to the general election, in the increased debates and newspaper reporting that followed.

In considering what might be said at this stage in the knowledge that the Bill will be with us in a few months' time, it has struck me that in the mean time other bodies have been showing an interest in what is at stake. It is quite clear from this debate that a great deal is at stake for those who live in Scotland, who have an interest in Scotland or who feel that Scotland should remain as it is, a member of the United Kingdom. I do not intend to go into detail, but if one reads the report of the Smith commission, which was prepared shortly after the referendum by the noble Lord, Lord Smith of Kelvin, and the reports prepared by a number of parliamentary committees in recent months—again without going into detail, I refer to the reports prepared by the House of Lords Constitution Committee, the House of Commons Political and Constitutional Reform Committee, the House of Commons Scottish Affairs Committee and the Scottish Parliament Devolution (Further Powers) Committee—one will get fuller detail of how people think and how serious this matter is. I commend those reports for consideration during the months that lie ahead. I have little doubt that they will assist in an informed debate and cover the great detail that is at stake.

Lord Ashton of Hyde (Con): My Lords, the noble and learned Lord was commendably brief, but I remind noble Lords that we still have 37 speakers to go. If we are to finish at a reasonable time and have adequate time for the Front Bench speeches, it would be very helpful if noble Lords would restrict themselves to the advisory speaking limit of seven minutes.

6.15 pm

Lord Jopling (Con): My Lords, the gracious Speech and so many of the speeches we have heard today referred to the one-nation approach to politics. I therefore

[LORD JOPLING]
suppose I ought to declare an interest as a former member of the one-nation group in another place. Sadly, when one leaves the other place or even comes here, one is excommunicated from that admirable dining group, but there we are.

I shall say a few words about the constitutional position of your Lordships' House. For many years now, I have said that, given a Conservative Government, the worst job in the world must be to be government Chief Whip in your Lordships' House. I recognise the problems which confront my noble friend the Chief Whip with only 29% of the vote in this House. I certainly welcome the statements from opposition parties recognising that final decisions lie with the other place and that the Salisbury convention still has great relevance. I hope those statements are the truth and are not mere words. Of course, we accept the right of the Opposition to make mischief and a nuisance of themselves so far as the Government are concerned, but I hope that the traditions of both Houses will be acknowledged, given that the Government of the day have only 29% of the vote.

My principal concern is the composition of your Lordships' House. For 10 years or so, I have made various suggestions, so let me comment on your Lordships' House as I see it in the light of the general election. I do so in the light of two principles. First, I do not want to see an elected House, and secondly, I do not want us to move towards proportional representation. So far as proportional representation is concerned, the electorate do not want it. Although it was not on that exact issue, the referendum made public opinion clear. The fact of proportional representation to which I am so opposed is that it is a potential recipe for weak government through alliances.

Next, I come to the problem with regard to numbers. By common consent, your Lordships' House is much too big with 788 members. I find it a joke when I talk to my American friends who say that their upper House manages very well with 100 members and ask what on earth we want 788, or around 800, members for. Therefore, I believe that the House should have its membership reduced by statute in tranches at successive general elections to a figure which we could discuss: let us say 500, or even 400. That is for discussion. The question is: how do you do it? The answer is, in exactly the same way as for the 92 hereditary Peers who were elected back in 1999. Each party caucus knows best who attends, who contributes, who should stay and who should go, and I would reduce the numbers in that way, with each party deciding at each general election. Total numbers must be reduced down to what would be a statutory figure of, as I say, 500, for example, and during a Parliament a statutory limit should be put on the number of new elevations, let us say of 5%.

I come to what should be the composition of Lords by party. It is vital that the House has some reflection of the current political environment. It should be broadly representative of current thought. Again, I think by common consent, there is a general view that the Cross-Benchers, who play such a valuable role, might have a statutory 20%, but I note in passing that they now have 178 Members, which is 23% of the whole vote. However, with regard to party representation very careful thought needs to be given. There must be a good deal more flexibility than we have now. The present balance does not reflect the current democratic atmosphere in this country, and the only way is to find a formula so that one can allocate numbers for each party which broadly reflect the current atmosphere.

I have often warned your Lordships' House that if a leader were to come forward, as has happened in other countries, and bring a party from nowhere into forming a Government, the composition of your Lordships' House would look particularly stupid if there was no representative here of that new governing party. In a minor way we have seen this happen in the course of the past month. We have seen the Scottish Nationalist Party gain 4.7% of the votes—8% of the seats in another place—while in your Lordships' House they have no representation at all. UKIP, with 12% of the votes, has only one seat, and has only three Members of your Lordships' House. I am sure that some of my friends will kill me for saying this, but in the next list some representative appointments ought to be made from both the Scottish Nationalist Party and UKIP.

Conversely, as I come to the end, with regard to the Liberal Democrat Party, which had 7% of the votes and only 1/10th of 1% of the seats, yet has 13% of the membership of your Lordships' House, at this time it would be very hard to justify new Liberal Democrat appointments to this House, because that party is significantly overrepresented at this time. If the Liberal Democrat Party believes in PR, surely it would be a good moment for its Members to vote among themselves to find a substantial number to stand down under the new rules, to make way—this is important—for some of those highly qualified former Members of the other place to come here. I think particularly of Sir Menzies Campbell and Sir Alan Beith. It would be very hard to justify making new Liberal appointments at this time.

I am sorry—I have spoken longer than I should have done. I have previously drawn attention to the need for flexibility, and today that is even more important than in the past.

6.24 pm

The Lord Bishop of Leeds (Maiden Speech): My Lords, I am grateful for the opportunity to speak in this debate, especially given the kindness I have already met in this House since being introduced in February. I wish to express my gratitude to all sides of the House for the welcome I have received and particularly to the staff, who have assisted and advised me, sometimes on the same issue more than once. This coming Saturday I will be speaking in Stuttgart before thousands of people along with Kofi Annan and the German Foreign Minister, Frank-Walter Steinmeier. At least today I can address this House in English.

I find myself in something of a quandary, as one who has lived in many parts of England but ended up in Yorkshire. In fact, coming to Bradford as the bishop in 2011 was something of a return journey. I studied German and French at the University of Bradford in the late 1970s before retraining as a professional Russian linguist at GCHQ in Cheltenham, an experience that shaped me, not least in relation to an understanding of security-related matters such as military intelligence

and the ethics of surveillance. Not only did the journey take me from intelligence—though not take intelligence from me, I hope—to theology, but also from a West Yorkshire industrial city that was beginning to decline, not only in wealth and productivity but also in morale and confidence. Radical demographic change also led in those days to substantial social challenge, as facts on the ground outstripped the creative ability to shape the post-industrial future.

When I returned to Bradford in 2011, having served in the Lake District, Leicestershire and south London, latterly as the Bishop of Croydon, I found a very different place. Yet it was evident that the seeds of a determined vision for future development were there in the creative energy of some of the key players in business, the council, faith communities and the social sectors. As well as the real and continuing challenges it faces, Bradford today is a place of growing confidence and well-founded optimism. Why am I talking about Bradford when I am now the Bishop of Leeds? It is for two reasons: first, because the Church of England has done something remarkable in Yorkshire, and secondly, because Bradford will be one of the touchstones of success or failure as regards the Government's much-vaunted aspirations for a northern powerhouse. I always thought the real northern powerhouse was Liverpool Football Club, but because of what we have seen at the end of this season, I will not mention it.

Four years ago the Church of England, not widely known for its cheerful and adventurous willingness to change itself, began a unique process of reorganisation. The dioceses of Bradford, Ripon and Leeds, and Wakefield, which were all created in the late 19th or early 20th century to enable the church to adapt to changed demographic and industrial realities, faced dissolution and the creation from them of a single new diocese for the region. A three-year process of debate led to a visionary agreement to do just that, and the Diocese of West Yorkshire and the Dales came to birth at Easter 2014. I became the diocesan bishop just a year ago this week. The diocese covers a vast rural area of West Yorkshire and parts of North Yorkshire, and the urban conurbations of Bradford, Leeds, Wakefield, Huddersfield, Halifax, Barnsley and everything in between. Now organised into five episcopal areas, we can maximise the potential for serving the region—which has an economy greater than that of Wales—while optimising our attention to the distinctive local realities of local communities. Challenging? Yes. Exciting? Definitely. I am privileged to be leading a diocese that encompasses so many of the lived realities that need to be represented in this House as the details and implications of government policies are debated and scrutinised.

The relevant point here is that the future needs to be shaped by those who have both vision and commitment. The complaint that the world has changed is usually the recourse of those who mourn a version of the past that probably never existed anyway. One of the lessons we have learnt in West Yorkshire through the often painful processes of reorganisation and institutional change is the need to focus on the big picture as well as the detail, never losing sight of the vision that drives us.

This has wider application. In response to the gracious Speech last week, I heard in this House several speakers refer to the need for reform of this House. Yet this occurred in the context of the potential or threat, depending on how you see it, of wider constitutional change. The role of the United Kingdom in Europe cannot be divorced from questions about the possible fragmentation of the United Kingdom itself. My fear is that bits of reactive slicing here and picking there will lead to a frustrating and unworkable sequence of partial reordering that loses sight of any common purpose or overarching vision. In this context, I shall simply observe that calls for a constitutional convention have the obvious virtue of bringing together a wide range of otherwise potentially atomistic concerns that should be considered together, taking cognisance of the fact that they interrelate anyway and will have inevitable consequences that would best be anticipated and debated rather than faced ad hoc and merely reacted to.

On questions of our place in Europe, I shall hope to return in future debates in this House. I lived briefly in both Germany and France, and I co-chair a commission that brings together the protestant church in Germany and the Church of England—the Meissen Commission. I am concerned not only with institutional national engagement with Europe but also with how we develop a new narrative for Europe that captures the imagination of my own children's generation in a way that the narrative derived from the mid-20th century response to war no longer does. I could say more, illustrated particularly by a debate that I had with Herman Van Rompuy in Brussels a couple of years ago, but I shall leave that to another day.

I said that there was a second reason why I mentioned Bradford—the northern powerhouse. Just under a year ago, I moved from Bradford to Leeds, about 10 miles, and I now live in a different world. Leeds is well connected and thriving in many areas, and key to this development over the past 40 years has been transport. Not only does the motorway system make Leeds quickly accessible from so many parts of the country but its rail links open it up to wide opportunities. Any concept of a northern powerhouse has to concentrate less on north-south links and focus more on building expandable infrastructure from west to east. Talk of the northern powerhouse usually includes reference to Leeds, Manchester and Liverpool, and understandably so, but unless cities such as Bradford are connected—and you cannot currently go by one train across Bradford, because there are two stations and they are not joined up—they will get left behind. The burgeoning of Britain's youngest city, in terms of the age profile of its population, with its cultural, gastronomic—and I mean curry—tourist and commercial riches must not be wasted by planning that compromises longer-term development by shorter-term limitations.

I spent eight years on the board of an international insurance group, from 2002 to 2010, and learnt a good deal about business, finance, organisational change and the shaping of business to serve not just profit but those whom profit is there to benefit. At the end of all deliberations, be they political, economic, cultural or financial, are the people who make or break our societies. By serving in this House, I hope to have the

[The Lord Bishop of Leeds]
adventure and humility to learn. I also have a responsibility to represent here the lived experience of people in the communities served by the church in West Yorkshire and the Dales. This includes those of wealth creation, business and enterprise, the rural economy and industry, but it also includes those who, whatever my own thoughts about the rightness or wrongness of particular policies, suffer the consequences of poverty, need and hopelessness. There is a verse in the Old Testament Book of Proverbs that stood as an indictment of much of the Christian church in Germany in the 1930s and 1940s. It says:

"Open your mouth for the dumb"—

in other words, give a voice to the experience of those who otherwise are silenced. This is why the Lords spiritual are here, rooted in communities across the whole of our country, networked internationally, informed, often inconveniently and compelled to tell the truth as they see it. I hope to fulfil this vocation with the humility and confidence that it surely demands.

All the work of this House and the established church is done in the glare of media scrutiny, and rightly so. Intelligent and healthy media are vital to a living democracy. As someone very engaged with the media, I remember the caution expressed by a former Bishop of Durham. Once when feeling depressed and misrepresented by the media he had lunch with a rabbi, who told him the story of the bishop and the rabbi sailing on a lake in a park. The rabbi's skull cap blew off and floated away on the water, and the bishop instantly stood up, got out of the boat and walked on the water to retrieve it. He got back into the boat and handed it back to the rabbi. Next morning's headline read, "Bishop can't swim". We need to keep things in perspective.

6.35 pm

Lord Liddle (Lab): My Lords, it is a great pleasure on my part to congratulate the right reverend Prelate the Bishop of Leeds on his excellent maiden speech in this House. It was charming and well constructed. Since I joined your Lordships' House five years ago, I have come to appreciate the wisdom that emanates from the Bishops' Bench, and I think that "Bishop Nick", as he is known, will make a good contribution. Like me, he is a lover of the miracle of modern Germany, yet we need to make a stronger and more modern case for Europe. Like me, he has written books; the difference is that it took me five years to write a book, while he seems to write one every year. He is also a voice of the north, and I was glad to see that his first curacy was in my home patch of Carlisle—so welcome, and congratulations.

I would also like to congratulate the noble Lord, Lord Dunlop, on making his maiden speech in introducing this debate, which is a very difficult thing to do. It was an excellent speech; I did not agree with all of it, of course, but it was an excellent speech. He is joining a very select trade union in this House, of former special advisers, of whom I am one. Again, I welcome and congratulate him, particularly since special advisers need protecting against what former Ministers say—inaccurately, perhaps—about them.

The centrepiece of the gracious Speech was the European Union Referendum Bill, which marks the opening of a period of profound uncertainty about our constitutional future as a nation. Our membership of the EU and the very future of the United Kingdom itself are inextricably linked. I accept that the referendum is now inevitable and that it would be constitutionally wrong for the Lords to try to oppose it in any way. When the referendum comes, I shall hope, at least, to be on the same side as the Prime Minister, fighting with the heart and soul that he once promised us to maintain Britain's membership of the EU and save him from the potentially disastrous consequences of his own folly.

I have to say that I did not undergo a doorstep conversion during the general election campaign. Although the referendum Bill is inevitable, I do not and will not support it, because I believe that it is a reckless gamble with Britain's future. It was on this issue that I believe that Ed Miliband got it right; it is a reckless thing on which we are now embarked—and it is reckless for two reasons. First, in setting up a series of demands for a change in our relationship with Europe, particularly on the issue of migration, we are setting up things that will be objectives, and which will be extremely difficult to achieve, if not impossible, in any renegotiation. The rather modest results that I expect from the renegotiation can only strengthen the hand of the populist anti-Europeans when the referendum comes. Because of this risk, I strongly urge pro-Europeans and, particularly, pro-Europeans in my own party in the other place, not to get involved in some competition over who can demand the toughest reforms. Reform in Europe is, of course, needed but Labour's continued support for our EU membership does not depend on reform. Under all circumstances we must be the champions of our membership of the EU.

I fear that the referendum also poses a reckless risk to the unity of the United Kingdom. I spent five days of the general election campaign on the doorsteps of Cumbernauld, so I know a bit about the Scottish situation. They were a particularly difficult and miserable five days for a Labour campaigner fighting for someone who was an excellent Labour Member of Parliament—and it grieves me deeply that Gregg McClymont is no longer in the House of Commons.

We face a critical situation as regards the union of the United Kingdom. I agree very much with what the noble Lord, Lord Forsyth, said—namely, that we now need a cross-party constitutional convention to think about the future of how we hold this nation together. The one event that would have the power to derail that effort to find a new constitutional settlement would be an EU referendum vote where England votes to come out of Europe and Scotland—as is now almost certain—votes to stay in. Make no mistake, this would be a vote for the break-up of Britain. The no-sayers to Europe in England could end up being the disuniters of our United Kingdom.

I do not believe that there would be consequences just for Scotland; there would be knock-on impacts in Wales as well. A vote for EU withdrawal would also greatly discombobulate the nationalist community in Northern Ireland, about which very little has been

heard, as it would result in one of the pillars of the Good Friday agreement crumbling to dust—namely, the fact that the island of Ireland is united on both sides of the border by the fact of EU membership. Therefore, I think we face a very serious situation.

Mr Cameron argues that the decision on our membership of the EU is one for the people of the United Kingdom as a whole. I am not convinced that he is absolutely right about this. If our future is as a federal Britain—I am not saying what the constitutional convention may come up with—the rights of each nation within that federation deserve proper and equal respect. Does England have an automatic right to enforce its will on the Scots or other parts of the UK just because of its population and dominance?

At the same time, the constitutional convention must address the question of English identity. The alienation from politics that led to a large number of votes for UKIP in working-class constituencies such as my home town of Carlisle in my view reflects a powerlessness on the part of communities that had the economic heart ripped out of them in the 1980s, and where nothing substantial offering hope has been put in its place. The answer to that has to be effective devolution all round, particularly of economic power, to our city and county regions to give them the power to rebuild their economies. I welcome the Chancellor's emphasis on his northern powerhouse, but it has to be more comprehensive in its approach and reach. This is the way to address the English question and establish consensus, and not allow the Conservative Party—I make a partisan point—to lead the charge on,

"English laws for English votes",—[*Official Report*, Commons, 26/3/2015; col. 1637.]

as Gordon Brown once aptly put it.

The case for Europe is fundamentally the same as the case for the United Kingdom: we are better together, meeting together the multiple challenges and threats we face in a spirit of solidarity with partners whose interests and values we fundamentally share. Just as we can revitalise our democracy by offering the prospect of genuine self-government to our nations, regions and cities in the United Kingdom, so through our membership of the EU we also gain the possibility of self-government on issues such as climate change and security that are now beyond the reach of even the biggest European nation states. Let us try to see off the risk of a narrow English nationalism taking over this country and seek a new constitutional settlement based on a federal Britain in a united Europe.

6.45 pm

Lord Rennard (LD): My Lords, the election results on 7 May 2015 felt for many of us like those of 1 May 1997 in reverse. However, what is consistent in our general elections is the lack of consistency between the votes cast and the number of MPs elected. This is not about unfairness to parties but about unfairness to voters, many of whom simply have not had their views properly represented as a result of the election.

Three weeks ago, the Conservative Party won just under 37% of the vote but 51% of the seats. The Labour Party won 30% of the vote and 36% of the seats and my party was reduced to 8% of the vote and only 1.2% of the seats. The lack of fairness and real democratic representation resulting from the recent election can perhaps best be seen in terms of the number of votes required to elect an MP from each party. On 7 May, it took 34,244 voters to elect a Conservative MP, 40,290 voters to elect a Labour MP, but 301,986 voters to elect each Lib Dem MP. The distortions from how people voted were even greater for other parties. It took 1,157,613 voters to elect a single Green MP and 3,881,129 voters to elect a UKIP MP. In contrast, it took only 25,972 voters to elect an SNP MP.

We heard much from the Conservatives in the election campaign about the threat of what they called the "undue influence" of the SNP but that influence now comes about because the electoral system rewarded a party that obtained 50% of the vote in Scotland with 95% of the seats in Scotland. This point was acknowledged by the noble Lord, Lord Forsyth, who is not in his place but who noted the problem without pointing to the obvious solution. The distortions produced by first past the post in Scotland will again, in my view, put in jeopardy the future of the United Kingdom.

Lord McAvoy (Lab): Would the noble Lord care to remind us of the result of the referendum on the AV proportional system?

Lord Rennard: My Lords, one of the big problems was that noble Lords such as the noble Lord, Lord McAvoy, clearly did not understand that AV was not a proportional representation system at all; it was far from proportional representation. If politicians in other parties had had the courage to let voters choose between proportional representation and first past the post, there might well have been a very different outcome. Certainly, it was an option in the Labour Party's 1997 manifesto, when Tony Blair secured a majority of 179 on the basis of that manifesto having a referendum on proportional representation. That should have happened.

This Government should now realise that achieving a majority in the Commons based on the support of less than 37% of the voters does not give them the right to rule as though the views of the 63% who did not support them are unimportant. We heard earlier from the noble Lord, Lord Dunlop, in an excellent maiden speech, about what he called fairness for England, but we heard nothing about fairness for voters. We also heard much from the Conservatives in the last Parliament about what they called "fair constituency boundaries". The consequence of the successful amendment to the then Electoral Registration and Administration Bill which I tabled in the autumn of 2012, together with the noble Lords, Lord Hart of Chilton, Lord Wigley and Lord Kerr, was to prevent new boundaries that would have given an even greater unfair advantage to the Conservative Party coming into force in the recent election.

However, I doubt that many of the newly elected MPs realise that the legislation passed in 2011 means that they may never be able to fight those same constituencies again. Unless there is another Bill to prevent it, the size of the Commons will be reduced from 650 to 600 in time for the next election. The coming

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boundary review will be very disruptive because of the very narrow margin of only 5% allowed for any variation in the number of electors from the average set as a target. Some MPs may also be shocked to learn that these reviews will also take place every five years under the existing legislation, so that MPs might never fight the same constituency with the same boundaries on two occasions. Nor will those MPs know the boundaries of the constituencies that they may want to fight until well into the second half of each Parliament. The Political and Constitutional Reform Committee in the other place did an excellent job of showing how the boundary reviews could proceed on a much more sensible basis. The new Government's response has been to abolish the committee.

In some of the first debates in which I participated in this place, I led for the Liberal Democrats on the then Political Parties, Elections and Referendums Bill in 2000. I warned then about the escalating arms race in party spending. On 3 April 2000, I said:

"In each of the 1974 elections the Conservative Party was calculated to have spent less than £100,000 on its national campaigns. By 1979, with the services for the first time of the noble Lord, Lord Saatchi, in charge of advertising, the Conservative Party is estimated to have spent £2 million … By 1983 the sum was £4 million; by 1987 it was £9 million; by 1992 it was £11 million; and by 1997 it was a staggering £28 million".—[*Official Report*, 3/4/00; col. 1160.]

The failure of the last Labour Government to heed those warnings about party funding has now resulted in a far greater problem in which our democracy may quite possibly be considered to be "for sale". The legislation that we approved in 2000 has clearly failed to control the arms race in party funding. In the year before the 2005 general election, the reported donations to the main parties amounted to £44 million. By 2010, the figure was £72 million, and this year it was over £100 million. That is a doubling in 10 years.

The proposal in the gracious Speech to limit trade union members making contributions without their express consent is long overdue. However, it must be part of a package that introduces a sensible cap on all donations, and allows all political parties to campaign without being in hock to the interests of the richest donors. Without that comprehensive package, British democracy may actually be sold off. We have an electoral system that is very far from one based on "fair votes", and a party funding system which means that campaigns simply cannot be called a fair fight.

It is a cruel irony that the result of the most recent election is that those who have not been properly represented in the Commons will have to have their democratic voice heard here, in a Chamber without democratic mandate. In this House we have a duty to moderate the absolute power that this Government may try to exercise, and to ensure that constitutional legislation in the coming years has the interests of the voters—not any one political party—at its heart.

6.54 pm

Baroness Quin (Lab): My Lords, it is a pleasure to be taking part in this debate, which includes a number of maiden speeches. In that context, I very much look forward, immediately after my own contribution, to hearing the maiden speech of the noble Lord, Lord Lisvane.

Today's debate focuses on a number of important themes. I cannot deal with all of them, but let me briefly record my strong agreement with the words of the noble Lord, Lord Thomas of Gresford, and others, about the importance of the European Convention on Human Rights.

I found the consequences of the general election deeply worrying for our constitution—consequences both from the actual election result in terms of seats and because of the approach to the constitution which the new Conservative Government seem from their election manifesto and from this gracious Speech to be likely to pursue.

Colleagues have spoken in this debate about their own experience of the election campaign. During that campaign I worked in three very different constituencies: in Gateshead, my old parliamentary patch; in Berwick-upon-Tweed, the constituency in which I now live; and in Glasgow East, where, despite the defeat Labour suffered, it was a pleasure working with a great team of enthusiastic and talented young Labour volunteers who I believe can make a great contribution in building up Labour support there once again.

I found it depressing that in a UK-wide election so much of the focus was on separate national identities rather than on our common British identity, and while I congratulate the Conservatives on winning the election I was frankly appalled at the tactics of claiming that Labour was in the SNP's pocket. Not only was that not true but it played into nationalists' hands in Scotland. It was no doubt a very useful short-term tactic to weaken Labour, but it was a very dangerous and irresponsible tactic for the long-term view of the cohesion of the United Kingdom. I am glad that some Conservatives, such as the noble Lord, Lord Forsyth, who I am glad to see in his place, had the courage to voice their concerns about this.

The emphasis on nationalism within the UK was also evident, I felt, in some bizarre broadcasting decisions during the campaign. The BBC, of which I am usually an enthusiastic supporter, gave us regional election debates that meant in reality a question-and-answer session with Nicola Sturgeon in Scotland, with Leanne Wood in Wales and, astonishingly, with Nigel Farage in England. Although I am no fan of UKIP, its title is the United Kingdom Independence Party, not the English Independence Party, and it has MEP representation in both Wales and Scotland. I certainly therefore resented UKIP being seen as the party of England in those debates. I can only feel relieved that despite the absolutely massive publicity given both personally to Nigel Farage and to his party, he was not actually able to win a seat in Parliament. I also thought that the absence of the First Minister of Wales, Carwyn Jones, from the regional debates was wrong. It was as if Plaid Cymru was the governing party in Wales in those debates, which is clearly far from being the case. Indeed, everything that happened in the election seemed to be aimed at reinforcing the view that devolution is only about national identity rather than about a rational and sensible decentralisation of decision-making.

Because of the nationalist surge, I also worry that south of the border we are becoming increasingly forced to identify ourselves as English rather than British, even though many of us, particularly those like me with mixed heritage, do feel British. As someone who welcomes and celebrates our increasingly diverse population, I am also aware that many people who came to our shores chose to come to Britain, to the United Kingdom, rather than to any one of our constituent nations.

I also have to say that I very much regretted what I felt were the Prime Minister's ill-judged and ill-timed comments the day after the referendum in Scotland, when he announced his plans for English votes for English laws. To those people—the majority—who had voted no in the referendum, this seemed like a further erosion of the United Kingdom, to which they had just given their support. How much better it would have been if, in welcoming the referendum result, the Prime Minister had pledged to do all he could to make the UK as a whole work better and to listen and consult widely before making further constitutional decisions.

Of course, making the UK work better as a whole will no doubt involve not only honouring the commitments to Scotland and Wales but devolution and decentralisation within England, but this needs to be done in a way that contributes to the success of the UK as a country as a whole and does not undermine it.

Sadly, the Government are now embarking on a number of England-only policies, some of which verge on the incredible. Apparently, money is to be given to cities but only if they agree to have directly elected mayors, even in cities where there have recently been referendums that have resulted in that idea being rejected by the people. For a Government who are planning to hold an in/out EU referendum, it seems an alarming precedent to be already ignoring or contesting referendum results that have been held in cities in our country. Are the Government similarly planning to ignore the EU referendum result if it does not produce a result that they like?

In the north-east of England there are towns that have elected mayors and there are towns that do not, but I have not noticed a difference in the quality in local government there as a result. Indeed, as my colleagues from the north-east of England know, I always like to pay tribute whenever I can to the huge successes of Gateshead Council in recent years, yet Gateshead, with its superb record of partnership with both the public and private sectors, is a traditional model of a council with the leader elected by the majority of councillors. I ask the Minister directly why the Government are proposing to penalise such proven success and why they are proposing to override wishes democratically expressed in local referendums.

Devolution in England is complex both because of the size of England's population and because of the different types of area within England. Some areas can fit into the city-regions model and some into the county-regions model, and some are a mixture of these, but the danger with one model is that some communities and rural areas, or areas such as the coalfield areas in the north-east, will lose out because they do not fit into some narrow definition decided by politicians at the centre. We need to get devolution right rather than rush into a single approach. I was glad that the Minister, in his opening comments, said that he rejected a one-size-fits-all approach across the UK, but I suggest to the Government that they also ought to reject a one-size-fits-all approach within England when looking at the issues of devolution.

Given, however, how complex further devolution within the UK is, this is why the constitutional convention is such a sound one. It has been remarkable that in this debate there have been calls for such a convention right across the House, from all quarters, so I urge the Government to give real consideration to this and not simply to plough ahead with their programme, which seems to be their approach at the moment.

7.03 pm

Lord Lisvane (CB) (Maiden Speech): My Lords, it is an honour—although one laced with trepidation—to address your Lordships' House for the first time. I congratulate the noble Lord, Lord Dunlop, and the right reverend Prelate the Bishop of Leeds on displaying absolutely none of the trepidation which I now feel.

I am the third Clerk of the House of Commons to have the privilege of membership of your Lordships' House. Last year, I followed my learned predecessors, Sir Thomas Erskine May in 1886 and Sir Gilbert Campion in 1950, so noble Lords of a mathematical turn of mind will see immediately that this is something which happens precisely every 64 years.

I had no difficulty in choosing Lisvane as my title. My parents and I were born in the parish or on its borders—it lies to the north of Cardiff. My grandparents are in the churchyard, and my great-uncle's name is on the Lisvane war memorial. The centenary of his death on the Somme falls next year.

I may not sound Welsh but, time out of mind, all my forebears have come from the Welsh Marches—with the single exception of a Danish great-great-grandmother, who was no doubt brought in to provide what my farmer neighbours in Herefordshire would call "hybrid vigour". My mother's family trace their descent from Einion ap Collwyn, a rather flaky 11th-century chieftain who was known as Einion the Traitor because he is supposed to have let the Normans into Wales, no doubt for money. Clearly he was an early opponent of devolution.

I could not have been made more welcome and at home in your Lordships' House. The warmth of the welcome from noble Lords on all sides and from staff in every department of the administration has been wonderful, and I am most grateful. I know a little bit about induction. The induction here for a new Member has been absolutely first class. My previous experience of induction was in 2010 after the general election, when, to let your Lordships' blood run cold for a moment, the House took in 227 new Members.

One piece of advice which my grandfather treasured from his time as an infantry officer on the Western Front was, "If in danger, fear or doubt, run in circles, scream and shout". Now I do not for a moment—not for a moment—charge Her Majesty's Government with possessing those emotions just at the moment,

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but on constitutional issues that well-worn piece of advice argues for purposeful deliberation. The gracious Speech contains seven measures which one might describe as constitutional, but they are all separate items on the menu. The menu does not, unfortunately, contain a proposal to fix the Fixed-term Parliaments Act. In respect of devolution, we face the intractable problem of asymmetrical populations and resources combined with centrifugal aspirations, leaving us with what people are already calling "the English problem".

I congratulate the noble Lord, Lord Dunlop, on his magisterial speech seeking to knit together all the issues, but there has never been a better time to ensure that changes are thought through, co-ordinated and integrated, because if they are not they will not stick, and if they do not stick they will not provide the abiding constitutional settlement that the United Kingdom needs. Whatever the process is called—"constitutional convention" it might be—surely this is the time for a comprehensive examination of the distribution of powers within the United Kingdom and, crucially, the processes for exercising those powers.

The gracious Speech is naturally a legislative agenda. This House has a very well-deserved reputation for the careful examination of primary legislation but might we not, more ambitiously, look for ways of legislating better, rather than making the best of what we have? Draft Bills, considered by Joint Committees of both Houses, are one option. Ministers have less political capital invested in a draft Bill and evidence-based change is more easily accepted. Of course, draft Bills are much more difficult in the first Session of a Parliament because of the other pressures on scarce drafting resources, but might we possibly hope for an assurance from the Government Front Bench of a record number of draft Bills over the course of this Parliament?

And we could think more innovatively. There was much to be said for the Victorian practice of Motions for leave to bring in Bills so that the necessity for legislating, and the broad intention, could be considered before getting involved in the scrutiny of a fully worked-out Bill. Why do we not use purposive clauses more extensively so that it is possible to debate an expressed intention as well as the means used to secure it? For those who are uneasy about the margin of judicial interpretation—I should say that I am emphatically not among them—purposive clauses have the added benefit of putting the intentions of Parliament on the face of a statute.

A constitutionally relevant matter which was not mentioned in the gracious Speech but which will be always in our minds in this Parliament is the condition of this wonderful building, known and loved throughout the world. I take some satisfaction from having initiated, with the Clerk of the Parliaments, the assessment of what needed to be done, because I felt very strongly that we could not be another generation of stewards who passed on our responsibilities to this building. But we will be faced with some agonising decisions. Whether we go for so-called super-aggressive maintenance, a "Cox and Box" decant or a full decant—and it is quite important that both Houses agree on the same solution—the outcome will be uncomfortable. Whatever decision is taken, we must see it in the wider context.

Work on this unique building will be a wonderful opportunity to nurture and develop heritage skills and crafts for which we have a national need. I declare an interest as a governor and former chairman of the Hereford Cathedral Perpetual Trust. I would like to see the foundation of a Westminster academy as an imaginative focus for those skills and a source of apprenticeships of all sorts, something about which I am passionate.

In considering the role of this House, I was glad to see no reference in the gracious Speech to any proposed change, although I hear the ghost of the late Mandy Rice-Davies at my elbow saying "Well, he would say that, wouldn't he?". What is often forgotten is that when Executives are over-mighty—and Executives of all parties will always be over-mighty; it is the default setting—parliamentary power is not a zero-sum game. The powers of the Lords do not detract from those of the Commons, nor those of the Commons from the Lords. The strength of the institution of Parliament lies partly in the fact that the two Houses are complementary and are not competing. They do the same tasks but in a different way. A perfect example is that in this House our Select Committees work horizontally across a number of government departments and responsibilities. In the Commons, they work vertically, drilling down into departments, agencies and regulators. They are complementary and not competing.

We cannot be complacent. Parliament has constantly to earn acceptance and understanding. A challenge for us all in the 2015 Parliament must be to spread greater understanding of what Parliament does for our citizens. If we can do that, what we do will be valued; and if it is valued, we can hope that our citizens will come to feel ownership of the institution that serves them.

Many years ago, the advice to maiden speakers in the House of Commons was to stop when you saw the Speaker's wig wreathed in flames. There is no such early warning device in your Lordships' House, so if I have trespassed on your Lordships' patience, I can only crave indulgence for one of the newest of new Members.

7.12 pm

Lord Cormack (Con): My Lords, it is an enormous privilege to be able to follow the noble Lord—my noble friend—Lord Lisvane. I congratulate him on a truly remarkable and splendid maiden speech. There is no word more misused in the English language than unique, but the noble Lord brings unique qualities and experience to this House. At a time when we are facing very real constitutional problems, to have him among us gives me at least great comfort. It is often said that such and such a person has an encyclopaedic knowledge of something but it is rare to be able to follow that by saying, "And he wrote the encyclopaedia". I would just commend to your Lordships the seventh edition of *How Parliament Works*, which was written by the noble Lord, Lord Lisvane, and Rhodri Walters, who used to be the Reading Clerk in your Lordships' House. It is an absolutely riveting read and I defy any Member, however much he or she thinks they know about Parliament, to put that book down without

having gained some real new insight. To me, along with *Erskine May*, which is a little more turgid, it is the indispensible guide to Parliament and its practices.

I would also like to say how much I enjoyed the maiden speeches of the right reverend Prelate, who is no longer in his place, and my noble friend Lord Dunlop, who has certainly taken on a formidable task. My noble friend said something which made me very gratified and encouraged. He said that there is ample opportunity for your Lordships' House to involve itself in debate. One of the unfortunate aspects of the past couple of weeks has been those who have approached the position of your Lordships' House with a degree of timidity. Supremacy rests at the other end of the corridor, in another place, in the elected House, but recognising that does not mean we have to abdicate our responsibility to scrutinise. We have a duty to scrutinise. If that means that on occasions we say to the Government, "You haven't got it right; think again", we do not have to feel inhibited by that. I speak particularly to my colleagues on this side of the House. Of course, I am delighted that we have a Conservative Government and that we have a majority—I am particularly delighted because I put money on it and won something—but we have a duty and this House has no point or purpose unless it says from time to time to the Government of the day, "You've got it wrong". At the end, we have to concede that the elected House has its supremacy. When we have said, "Please think again" and it says, "No" and we perhaps say it a second time and it says no again, that is that. But we must not feel inhibited or cowed in any way.

There are some extraordinary issues that we have to face. I share many of the concerns about the suggested abandonment of the European Convention on Human Rights. I was much encouraged by what appears to be the Prime Minister's very sober and sensible view, as given in this morning's papers. But here is an issue where time must be taken. We have a Joint Committee on Human Rights, which should be asked to report to both Houses and be able to take evidence before we have a Bill. Perhaps the Government should produce a White Paper for it to consider and discuss during its deliberations. That is a sensible way to approach things.

Several noble Lords in all parts of the House have talked about a convention. I am broadly in favour of a constitutional convention but only if it comes after proper preparation. How will it be drawn up? Who will be in it? There is an overwhelming case for a Joint Committee again of both Houses to look at this issue, how it should best be constructed and what its remit should be. My noble friend Lord Forsyth made a splendid speech—and I agreed with so much of it—about the problems in Scotland. I can see the noble Lord, Lord McFall, who also made a very thoughtful speech, nodding.

I believe passionately in the United Kingdom of Great Britain and Northern Ireland. I believe that a dangerous way to advance the interests of the union is to move in the direction of English nationalism. "English votes for English laws" comes trippingly off the tongue. The Government, with their acceptance that at Second Reading and Third Reading every Member should vote, recognise this. But it is crucial that it should be recognised.

Again, there is talk of the northern powerhouse. Anyone who has an interest in the history of England—we are talking in this context of England—must look with admiration at the achievements of our Victorian forebears in the great cities in the provinces; namely, Birmingham, Leeds, Liverpool and Manchester. You have only got to go to any of the great civic buildings in those cities to realise that. But that progress came from the people, and a model was not thrust upon the people. The noble Baroness, Lady Quin, made a good point when she referred to the position of elected mayors. There is something alien in the concept of a presidential figure having executive authority over a great town or city. If the people themselves wish it, then so be it, but do not suggest that that is the only model, the only way forward, because, most emphatically, it is not.

We have to beware of splitting England because that is no way to advance the cause of the union. England is so predominant in its size and its economy that everything done here has repercussions in Northern Ireland, Wales and Scotland. The whole business has been made more difficult by devolving—but we have done that; we cannot go back—and that is where the noble Lord, Lord McFall, was right when he gently chided my noble friend Lord Forsyth. My noble friend and I might wish that we were not here, but we are and we have to respond to the circumstances as they are. It is crucially important that we recognise that, because England is so predominant in its size and its economy, the United Kingdom is not a template for a federal constitution and cannot be so.

That is why—I come back to a point I made earlier—the preparation for any constitutional convention must be thorough and carefully done, and I think it should be done by Members of both Houses working together. Then we will move forward. In all those deliberations we have something to contribute, not least in the vast experience of people such as my noble and learned friend Lord Mackay of Clashfern, the noble Lord, Lord McFall, many others and, on this day of all days, the noble Lord, Lord Lisvane, who could inform every discussion on the basis of an unrivalled experience.

7.22 pm

Lord Elder (Lab): My Lords, I wish to make a few brief reflections on the present position in Scotland and a further point on the electoral system generally in the light of the election result and the announced legislative programme.

We have still to introduce the most important Calman recommendations, never mind the more recent recommendations, relating to finance. I declare an interest because I was a member of the Calman commission and was heavily involved in its discussions. Calman reported in 2009—almost exactly six years ago—and those important recommendations have taken far too long to be introduced. I do not understand why it has taken so long. After all, the tax proposals in the original White Paper were on the statute book within about two years. For this to have taken more than six years is astonishing.

We should remember that the original Scotland Act included a referendum not only on the general issue of devolution but also on the separate question of setting

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the tax rate within, certainly, fairly narrow bounds. This would have affected Scottish Government income by plus or minus £1 billion in the figures of the time. However, it was a start and Scotland voted to have that power. It was not, however, to the taste of the SNP and so the power was simply dropped by it. It was supported by Scotland but was inconvenient for the Scottish National Party. It was an interesting turn of events and one to bear in mind as we are told by the Scottish National Party what Scotland wants.

I make this point because I am keen to get away from the position where all we hear from the Scottish Government is about new powers—by which they mean new powers to spend—with no real requirement to raise some of the money themselves. Setting tax rates will help to rebalance that, especially as the Scottish Government have finally apparently realised that fiscal autonomy is not at present a realistic possibility.

The Scottish Government always want more powers but, as was shown on finance, they do not want—at least within the present system—to have more responsibility for raising them. The Calman proposals were designed to do both. In the eyes of Holyrood, everything that is spent in Scotland is the result of their efforts, and everything that they cannot do is the fault of Westminster for not giving them enough money. There is recent and mounting evidence that in matters such as cancer screening and in some key areas of education policy standards in Scotland are falling, and that is not Westminster's fault.

Those of us who wish to remain in the United Kingdom need to remember that there are no circumstances in which the SNP will not say that it wants more powers. It is much keener to do that than to argue on policy matters because it knows that that is the one thing on which it can unite the party. We need to be much more assertive in pointing out how badly it is using some of the powers it already has. We need to keep our nerve in saying, as the Scottish people did 12 months ago, that there is still need for central powers and to be part of the United Kingdom.

The original Scotland Act 1998 set out what was reserved, not what was devolved. We need to bear that in mind. We cannot endlessly chip away at what is reserved and still remain, in any real sense, a united kingdom. However, that is what the Scottish people voted for. The SNP may never win a referendum on independence. There is enough evidence from, say, Catalonia and Quebec that you can have national movements which press for more powers but ultimately —at least so far—get no further than that. It would be absurd if we were to respond every time to nationalist pressure for more powers and find that independence had been reached more or less by accident.

My final point, which is very different, relates to the electoral system which has produced the recent general election result. I say this with fear and trepidation. My preferred electoral system would be a central parliament elected by first-past-the-post dealing with central economic policy, defence and foreign affairs, and to devolve from that parliament the rest, as far as possible, with increasing degrees of proportionality as we get nearer to the community. I say in parenthesis that the SNP's enthusiasm for devolution is for devolution from Westminster to Edinburgh and not from Edinburgh to anywhere else. They are a very centralising Government.

However, I fear that that will not happen and so, reluctantly, I have to conclude that the present system, which has given absolute power to a Government with only just over a third of the votes cast and denies effective representation to other parties which have polled millions, is no longer fit for purpose. If we cannot change the structure of government, we need to address the issue of the voting system. I support strongly the idea of a constitutional convention, which must look at all the matters that have been discussed already. However, I fear that the time has come when we must also consider whether the present electoral system can continue.

7.28 pm

Lord Woolf (CB): My Lords, I have heard some excellent speeches today, particularly from the three new Members of this House who made their maiden speeches. I am also conscious that this is the first time that I have to consider the situation that arises from having a second Lord Chancellor who is not in this House and not a lawyer. From that point of view I welcome the fact that the new Lord Chancellor decided to invite further consultation on a matter of great importance to not only this country but all other truly democratic countries around the world—that is, the suggestion that we should take drastic action about the result of the remarkably successful achievement of the introduction into our domestic law of the European Convention on Human Rights.

That was achieved by the 1998 Act, with considerable success in practice. It was a huge step for this jurisdiction to take, because although we played a part in drafting the convention, it was also very much influenced by jurisdictions whose legal traditions were very different from our own. We always focus on the contribution we made to its drafting, but I am bound to say that if this discussion were taking place in France, they would be claiming equal credit and responsibility. That document was hugely influenced by not only a common law jurisdiction, but a jurisdiction different from ours—a civil tradition that was adopted around the globe, in the same way as ours had been. The provision was implemented by a short Act of Parliament, at a fairly late stage in its career compared with the situation on the continent, where many jurisdictions had been dealing with the convention directly, and we had to face up to the same problems as they had faced and dealt with very well.

One of the reasons why judges welcomed the Act when it came into force was the situation that existed in our legal system before that Act. In fact, we had two systems. Our citizens could be involved in litigation going before the European Court of Human Rights without those cases going through our courts at all, so their progress and outcome were not influenced by the contribution this jurisdiction's judiciary could make. We did a very good job of absorbing that convention and getting the benefit it could provide: there was now one system whereby, before someone went to the European

Court, they had to satisfy it that they had exhausted the domestic remedies through which our judges and lawyers could make a contribution.

The jurisprudence that came out of this country and out of the European Court show that both were benefiting from the process. Not all the decisions were ideal, and I, as a judge in this jurisdiction, could easily identify for the House certain ones in Europe that I thought were wrong. Equally, I was aware that, in its approach to the convention, this jurisdiction benefited considerably from the fact that, in dealing with human rights—fundamental rights of a global, rather than domestic, nature—different techniques were required. Here, I pray in aid what the noble and learned Lord, Lord Hope of Craighead, said in his admirable speech. He pointed out that since 1998, a great deal of water has flowed under the bridge and the process of consolidating the European convention and our own common law has gone hand in hand. One surprising thing about the European Court of Human Rights is that, in many ways, it is a common law court that approaches cases according to the facts, rather than the principle. It comes to a conclusion based on the facts and does not mind moving forward stage by stage, evolving the law in the way this jurisdiction does, which is one of the great strengths of the common law.

The fact that I am speaking so favourably about the European Court and the European convention does not mean that I am against the idea of a British Bill of Rights in principle. Like the noble and learned Lord, Lord Mackay of Clashfern, I can see nothing wrong in principle in having such a Bill. But if a British Bill of Rights is not currently necessary, and if I am right in saying that having two systems did not work, let us not go back on what we achieved through the 1998 Act unless there is very good reason to do so. I have been following as closely as I can the arguments in favour of a British Bill of Rights, which involve pointing out the shortcomings that are said to exist with the European Court's judgments. I can only say that in my view, the case has not been made to justify taking the risks involved in starting again, when we have made so much progress since 1998.

That is why I very much welcome the wise decision that was taken to have further consultation. I listened to what the noble and learned Lord, Lord Falconer of Thoroton, said about what happened last Thursday in the other place, and I have read the relevant *Hansard*. I see no reason why this House should not think that, when it is said that consultation will take place, that means meaningful consultation, and that is what I urge. It could take many forms, but let us have meaningful consultation. If we do not, we will let down not only the citizens of this country, but the citizens of the many countries that depend on our influence, and who look to us when considering how to deal with the big issues we face today, many of which have at their heart the observance of the rule of law and the convention on human rights.

7.38 pm

Lord Lawson of Blaby (Con): I hope the noble and learned Lord, Lord Woolf, will forgive me if I do not follow up his remarks on the important issue of human rights, because we have limited time and I would like to focus on the issue of Scotland.

The noble Lord, Lord Dunlop, made an excellent maiden speech. As the responsible Minister, he has a hard road to hoe in our debates on this issue, as he will increasingly find—I am sure he is expecting this—and I wish him the best of luck. We have been very privileged. I have been a Member of this House for nearly a quarter of a century, but I cannot remember three more distinguished maiden speeches than those we have heard today.

As far as Scotland is concerned, like other noble Lords who have spoken, I am a committed supporter of the union. I am a unionist on the grounds of history and of sentiment, and indeed for hard-headed defence considerations—but not at any price. The question before us is this: what form of constitutional settlement should we seek in the light of last year's referendum and the promises made at that time, followed by the sweeping success of the SNP in last month's general election?

In my judgment, the Smith commission did as good a job as it could in the wholly inadequate time available to it, but its work was far too hurried and the outcome inevitably defective. In any event, it has been rejected by Scotland's triumphant First Minister, so it is a case of back to the drawing board. Moreover, as my right honourable friend the Prime Minister has insisted, fairness to England must be an integral part of the new constitutional settlement, and this was outwith the terms of reference of the Smith commission. I join those on all sides of the House today who have called for the setting up of a full-blooded constitutional settlement covering both of these interlocking dimensions, but not all the other important constitutional issues that will be raised in this debate. That would cause inordinate delay and time is not on our side.

Among the most important issues to be decided is the degree and nature of Scottish fiscal autonomy. The Smith commission recommended a significantly increased degree of fiscal autonomy, and since the election, the Prime Minister has hinted that this might be taken slightly further. But fiscal autonomy has two meanings. The first essentially concerns the freedom to decide whether Scotland is to be a high tax and high public spending economy or a low tax and low public spending economy. That is fair enough, but the second meaning of fiscal autonomy concerns the freedom to borrow, and this raises very big issues indeed which have scarcely been addressed at all. The Smith commission decided that Scotland should have increased borrowing powers for certain specified purposes, subject to Treasury approval, but that merely raises the issue without settling it.

It is no accident that in a number of developed federal constitutions, the subordinate Governments are granted a high degree of fiscal autonomy in the first sense, subject to an overriding balanced budget constraint. The precise nature of the borrowing constraint and the method of its implementation has to be a central pillar of any new constitutional settlement. For a Scottish Government would be borrowing in sterling, the currency not of Scotland but of the United Kingdom as a whole, yet that discipline seems to be far from the present thinking of the SNP, which

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presents itself as a means of escaping from what it calls "austerity". And austerity is all about borrowing—to be precise, the means of reducing and eventually eliminating the budget deficit. We have only to look across the Channel at the travails of the eurozone in general and Greece in particular to see the centrality of the problem of separate national authorities borrowing within a common currency area. As I well recall, we in this country faced the issue to a lesser but still serious extent with Liverpool's excessive and irresponsible spending and borrowing in the 1980s. The position of Scotland, of course, is hugely more important and more serious, and so far has scarcely been addressed at all.

The other major issue for a Scottish constitutional settlement is, as I have already mentioned, fairness to England. The Government appear to be committed to the EVEL proposal: English votes for English laws. I believe this to be objectionable in principle and unworkable in practice. It is objectionable in principle because those of us who wish to preserve the union cannot wish to see the Westminster Parliament composed of two separate classes of MP with separate voting rights. It is unworkable in practice for reasons well explained by, among others, the Prime Minister's old politics tutor, Professor Bogdanor, in an article in the *Guardian* last September. Unlike most of what appears in the *Guardian*, it is well worth reading. In a nutshell, the proposal—which so far as I am aware has understandably never been attempted in any other serious democracy—would make effective and coherent government impossible. It would, incidentally, also lend itself to gaming: a Government dependent for their existence on the support of Scottish Members would have little trouble in ensuring that all their legislation had a Scottish dimension.

The only workable solution, as my noble friend Lord Forsyth has already pointed out, is that which was adopted a little under a century ago when southern Ireland seceded and Northern Ireland was given a high degree of home rule under the Stormont Parliament—accompanied by a significant reduction in the number of Ulster Members of Parliament. A marked reduction in the number of Scottish MPs may lack the theoretical logic of the EVEL proposal, but it avoids the divisiveness of two classes of Westminster Members and is eminently workable, as the Northern Irish precedent has shown. It is essential that it is seriously considered by the much-needed constitutional convention.

I have one final and more fundamental point. The outstanding success of the SNP in last month's general election reflects a number of factors, but most obviously a reawakening of the sentiment of Scottish nationalism. I have never been among those who decry nationalism. It is true that there have been occasions in history—never, happily, in this country—when terrible things have been done in its name, and it is equally true, as indeed we are vividly reminded today, of religion. But that is not widely considered a reason for abandoning all religion. Nationalism is important because people need a sense of togetherness and belonging, and because democracy is unworkable without it; for it is the nation which constitutes the demos. The union will not be saved without a reawakening of British nationalism.

7.47 pm

Lord Tomlinson (Lab): My Lords, for some years now I have felt a sense of pride in being able to represent this House as a member of the Parliamentary Assembly of the Council of Europe. However, in recent years that pride has given way to a combination of sorrow and anger at the increasingly strident way in which the British Government have sought to criticise both the European Convention on Human Rights and the Human Rights Act 1998.

Let us be absolutely clear from the outset: the European Court of Human Rights is not a European construct. It comes as a logical progression from the Universal Declaration of Human Rights in 1948 and the determination at the end of the Second World War that the horrors that man had inflicted on his fellow man should never happen again. From the Universal Declaration of Human Rights came the European convention.

We now call for a Bill of Rights, but in fact we have one: it is the Human Rights Act, which was legislated for by the last Labour Government. What irony there is in the fact that at a time when we are celebrating 800 years of the signing of Magna Carta we are almost simultaneously seeking to strike down the Human Rights Act.

I think we should remind ourselves of what the 2015 Conservative Party manifesto said. It stated quite clearly:

> "The next Conservative Government will scrap the Human Rights Act, and introduce a British Bill of Rights. This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK".

The party has also said that it would:

> "Limit the use of human rights to the most serious cases".

However, by the time we came to the Queen's Speech, that clear manifesto promise had been reduced, and the pledge boiled down, to 12 words:

> "My Government will bring forward proposals for a British Bill of Rights".

I did not agree with one part of the speech made by the noble and learned Lord, Lord Woolf. The rest of it was admirable, but I do not think that this is a time just to reflect. There has been plenty of time for reflection. It is nine years since David Cameron, although he was not Prime Minister at the time, established a panel of legal experts. Despite the passage of those nine years, the manifesto pledge that we were given proposed a law of constitutional standing with no knowledge of the content and no clarity as to its compatibility with our international and treaty obligations, especially to the devolved parts of the United Kingdom. The jingoistic claims about the Human Rights Act undermining British sovereignty do not stand up to examination. In fact, as the noble and learned Lord, Lord Woolf, showed us, the reverse is the case. Before there was a remedy under British law in British courts, there was only one course of redress: to take your case to Strasbourg. It was not a case of increasing the powers of British courts.

Government policy is very confused at present, as the house magazine of the Conservative Party this morning shows us very clearly in its graphic headline,

"May and Gove split with PM in human rights row". It is not a question of further consultation or further clarification, it is that despite the last decade of deliberations there is still an overwhelming need to patch up the divisions inside the Conservative Party and the splits that so clearly exist there.

As we appear weak in our defence of human rights, we are doing two things simultaneously. We are, I believe, weakening our moral authority and giving comfort and succour to those who are poor in their application of the convention. That will be a disservice to mankind and a disservice to human rights, and it is a course that we should resist entirely when the legislation comes before us.

7.52 pm

Lord Purvis of Tweed (LD): My Lords, in many respects, the fear of who might govern one part of the United Kingdom was a decisive factor in who was elected in another in the general election. The playing off of one part of the UK against the other for electoral purposes will perhaps be a feature of the 2015 general election that will be written about by historians to come. Our electoral system acts as both an accelerator and a condenser in this. We have a majority UK Government elected by 37% of the people—in effect an English majority—and a bloc of Scottish MPs, 95% of whom were elected on just half of the votes. I congratulate the Conservative Party and the SNP, which used the first past the post system to devastating effect. However, if we have five years or more of governing where the political interest is to maintain this fear, and where there is a climate in which political advisers advise the leaderships of those two parties to maintain the bear at the door, north or south of the Tweed, we will have a permanently fractious union, to the disbenefit of every nation within it.

Before I turn to a legislative measure not mentioned in the gracious Speech and suggest a potential way forward for the long term, I will address a measure that is in the Government's programme: the Scotland Bill. I support the Bill and commend the Secretary of State—a former fellow MSP when I served in the Scottish Parliament and also a former Liberal Democrat—and his predecessor, Alistair Carmichael, who both have honoured their commitments to turn the Smith commission proposals into legislation. Parliament will no doubt scrutinise the legislation, but it is both a fair representation and an impressive piece of work, given the timescale of the Smith commission and the duties on government to realise the proposals in legislation.

All the principal parties in Scotland agreed to the proposals. The SNP also agreed, but, in footwork more nimble than a sabre dance, it instantly condemned the Bill and said that it was not sufficient. Now the SNP has an opportunity to convert the Scotland Bill, through a whole suite of amendments from their 56 MPs in the Commons, into what I understand it still proposes to see, which is a measure for full fiscal autonomy. For the party to match its election rhetoric—and, indeed, the commitments from Nicola Sturgeon, the leader of the SNP, during the leaders' debates in the general election—its MPs would have to bring forward detailed amendments to turn the Bill into a full Scottish fiscal autonomy Bill.

Alex Salmond said on election day that the "Scottish lion" had "roared" when people backed the SNP and its plans for full fiscal autonomy. This week, and following Second Reading in the Commons, is their opportunity to prepare a whole raft of amendments to bring this to fruition. When the measure comes to this part of Parliament, we will see the measures that they have brought forward. Of course, if they do not bring any forward, then we can draw our own conclusions about the robustness of the principle of full fiscal autonomy—the party's flagship policy for over a decade.

The election changed politics, not only in Scotland but across the whole of the United Kingdom. Our institutions must adapt to this, too. We now need to design our future constitution. Our current framework, even with the Scotland Bill passed, is not sufficient to meet the future demands of the United Kingdom. Let this be the term of Parliament when we settle the questions of our unions—our union in these islands and within our nations, and the Union beyond our shores with our European neighbours. Let this be the term of Parliament when we settle for the people these long-term decisions and establish the best constitutional framework for the long-term governance of the United Kingdom.

To develop that, and in the absence of any proposal in the Government's programme, I hope that Parliament will take a lead in supporting the Constitutional Convention Bill that I was fortunate enough to secure in the ballot for Private Members' Bills. It received its First Reading today. The Bill states, at its core, that there should be, no later than 31 December 2016, a convention to,

"make recommendations on the constitution of the United Kingdom",

and, in particular, to consider,

"the devolution of legislative and fiscal competence to and within Scotland, England, Wales and Northern Ireland … the devolution of legislative and fiscal competence to local authorities within the United Kingdom … reform of the electoral system",

and, yes,

"reform of the House of Lords".

In my view, it should consider how this institution can best be placed as an institution for all of the United Kingdom, binding together the nations and regions of the country.

I believe very strongly that a constitutional convention can also provide the opportunity for creating a narrative statement on what the United Kingdom is and what it offers its citizens—a charter of a new union, if you will, which can be a legacy of Her Majesty's current reign but also allow that narrative to be here for future generations.

During the referendum on Scottish independence, some of the best arguments I heard—both for and against independence, but most profoundly for the union carrying on—were made by young people: in fact by the youngest voters. They had a coherent fluency of argument far beyond that of politicians.

Finally, in congratulating the noble Lord, Lord Dunlop, on his maiden speech and his introduction as Minister, I observed from the speech of the noble and learned Lord, Lord Falconer of Thoroton, that the noble Lord, Lord Dunlop, had studied under John P Mackintosh. John P Mackintosh has been a great

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inspiration for many in considering what the right balance of governance in the UK should be. In the Scottish Parliament building in Holyrood, carved on the granite threshold of the Donald Dewar Room, is this quote from John P Mackintosh:

"People in Scotland want a degree of government for themselves. It is not beyond the wit of man to devise the institutions to meet these demands".

Surely it cannot be beyond the wit of men and women now to devise the UK institutions fit for the next generations, to inspire trust, enthusiasm and hope so that we are not governed by fear as the election, I am afraid, was won by fear. The best provision we can make for the young people of our country is to create a constitutional convention that is citizen-led, and to come up with the kinds of solutions that I believe can be long-standing for the UK.

8.01 pm

Baroness Adams of Craigielea (Lab): My Lords, it is always a pleasure to follow the noble Lord, Lord Purvis. I congratulate those who have made their maiden speeches today, every one of them far better than most of us have ever heard in this House.

We are in a constitutional mess and there is no mistake about that. It reminds me of the story of the man asking for a destination and being told, "Well, I wouldn't start from here". I do not think that any of us would start from here, but the question is: where do we go from here? What should be our direction of travel? Unless we have a clear destination we are not going to get very far, yet I have heard very little from the Front Bench today to give us a clear destination of where the Government think we should be going. We have heard yet more piece-by-piece items being raised that we should continue to add on to the constitution. One of them, of course, is English votes for English laws, coming, it is said, from the great question—the West Lothian question.

We were very often asked, on the Labour side in the Commons, what our answer was to the West Lothian question for Scotland. The West Lothian question was never a question for Scotland. Scotland was at that time putting forward measures to devolve some issues, home affairs in the main. How people in England decided to undertake their own home affairs was a matter for the people of England. We are coming to that question only now, all these years on. But I have to ask myself: can we in a Parliament that elects people from every corner of these islands then separate off the home affairs of one part of that? I would contend that that is not a suitable solution to the question posed.

I think that the only way in which we can find a suitable solution is by having a constitutional convention. All the people of these islands are entitled to be represented in equal measure within this institution. Scything one part off is not going to do that. It is almost like building a house which you continue to add to without looking to the foundations. The foundations of this UK Parliament are very old and we have continued to add devolution solutions, local government solutions and mayoral solutions without looking at how those affect the foundations. If we go forward with English votes for English laws, that may well be the solution that cracks the foundations of this union.

There is no doubt that in the election a few weeks ago there was a seismic change in Scotland—or was there? The SNP success was on a 76% turnout of the electors; it achieved 51% of that turnout, which means that 38% of those eligible to vote sent 56 out of 59 MPs to the other end of this Building. We then have to ask ourselves: are all the people being equally represented? I do not think they are. The noble Lord, Lord Purvis, is quite correct when he says that we have to look again at the voting system that produces such a result. I have always supported first past the post and it may well be in a constitutional solution that suits everyone that we come to that agreement, but it surely cannot be right that 50% of the people in Scotland are represented by three Members of Parliament.

We have in Scotland now almost a one-party state. Part of that was that during the election campaign there was very little scrutiny of the SNP. The SNP continuously draws power from blaming Westminster for everything that goes wrong. But let us just take a look at one aspect of the SNP's policies. It makes great play of free university tuition but fails to tell us that this came at the cost of 170,000 places at further education colleges. There is a lot there to be looked at. We in this part have not taken part in the blame game, but perhaps it is time that we pointed out the positives of this union and stopped focusing on the negatives.

Another problem that we had in Scotland was undoubtedly the Tory posters showing the Labour leader in Alex Salmond's pocket. That may well have worked in England, but we on this side found ourselves caught between two nationalistic approaches. What does it say to people in Scotland when they are told, "You are better off with a Tory Government than a Labour Government who can be supported only by Scots"? And we wonder why nationalism continues to breed.

I think the only solution we can come up with here is to set out on the road of a constitutional convention, one that looks at the governance of the UK as a whole, with equal votes and equal representation for everyone in the UK as a whole. I hope that the Government will look closely at the Bill that the noble Lord, Lord Purvis, has introduced and take it very seriously indeed if we are to continue to have a UK at all.

8.08 pm

Lord Bew (CB): My Lords, the gracious Speech includes one very important sentence as far as Northern Ireland is concerned:

"Legislation will be taken forward giving effect to the Stormont House Agreement in Northern Ireland".

Ever since Her Majesty uttered those words in this Chamber, it has become clear that the Stormont House agreement barely exists as a consequence of the stand-off in the votes in the Northern Ireland Assembly. Over the weekend there were what appear to be well-sourced reports in the Northern Irish papers about the possibility of a Stormont House agreement mark 2, but at this point the Stormont House agreement is in a fairly parlous condition.

This is not the Government's fault. There are a number of miscalculations involved. It may indeed be that, like so many people, Sinn Fein believed the polls during the election campaign and believed there would be a change of Government, which would allow it at least a face-saving move in the context of the austerity issue. I do not actually believe that, had there been a change of Government, there would have been a really significant change in the public finances of Northern Ireland and at Westminster, but there clearly could have been an atmospheric change, which would have been helpful to the Sinn Fein leadership. Anyway, the miscalculation has been made and they are now in a difficult position. The consequences of the arrangements in Northern Ireland are that we are all in a difficult position. It is a difficult moment and it is quite hard to see how Northern Ireland will extract itself.

In his important speech introducing the debate today, the Minister stated explicitly that the Government intended to legislate anyway for those elements of the Stormont House agreement that lay within their sole area of responsibility. He included in this respect measures for dealing with the past and the legacy of the Troubles, proposals that essentially emerged from the Haass talks some time back. I have no problem in principle with the suggestion that the noble Lord articulated about the need for an oral history archive. I only wish to say that I speak from fairly bitter personal experience, having been involved in the setting up of an oral history archive at Boston College, when I say that these things can become very fraught, very difficult and very painful. Very careful thought is required so that this particular idea does not run into some of the same difficulties that we ran into. I am afraid that good intentions, in this respect, are not enough.

I wish to advance one point with great seriousness: the need for a government strategy in this area that is more proactive than it has been in the past—I speak of both the Conservative/Lib Dem Government and the Labour Government, which were so important during the peace process. In handling the past, we have actually managed to garner essentially the worst of both worlds. A classical example is the decision, which is confirmed in the Conservative manifesto, that there should be no general amnesty. There are very good reasons for this, not least the provisions of the Good Friday agreement, which the noble Lords, Lord Trimble and Lord Empey, played such a role in bringing about in 1998. That having been said, the on-the-runs controversy has convinced many ordinary citizens that there is in effect at least a partial amnesty for terrorists. Therefore, we have garnered, in a sense, the worst of both worlds. The Government's posture is typically defensive and crouching. Somehow, details and stories of allegedly nefarious activity by state agents—sometimes not allegedly but definitely nefarious activity by state agents—keep coming out, again and again and again, most recently in last Thursday's "Panorama" programme.

I want to argue that there needs to be a moment of reflection about what information to release and how to do it. The manifesto commitment of the Conservative Party says something very interesting. It says that, in government, it is not going to be party to rewriting the past—logically, that means rewriting the past in the interests of terrorists. However, that cannot be left just as a pious hope or aspiration. Thought has to be given to the contextualisation of material and, I suspect, a fairly radical approach to the release of the material, but not in some sort of vacuum.

Let me say something that struck me very forcibly last week when Sir Brian Cubbon's death was announced. Three decades ago, Sir Brian Cubbon was in the car in which the British ambassador to Dublin was blown up and killed. Judith Cook, a young official who was a contemporary of mine in Cambridge, was also killed, and Sir Brian was badly injured. Cubbon was a great patriot at the centre of policy; later, he would be in the Home Office as PUS, but in the late 1970s he was in Northern Ireland. Cubbon is now gone. He is now not available to explain to us the context of policy and the difficult decisions that any liberal democratic state has to take in the face of a dirty, sectarian war and terrorism. It is this type of testimony that the Government should be preserving. It is quite remarkable that, if you want to learn about the mistakes that the British Army made on Bloody Sunday, we have published a multi-volume account to tell that to you. If you want to understand what happened in the background to the murder of Pat Finucane, a multi-volume account is available to you, all published by the state. But if you want to know how a liberal democratic state tried somehow to palliate a brutal, sectarian civil war and eventually bring peace to a troubled Province, we have not a word to say.

I am really arguing here that candour is the best policy, but there is a moment for thought here. If we are going to go ahead and implement the elements of the Stormont House agreement that are not dependent on the local parties, we should take our time and reflect carefully on how we actually do it.

8.15 pm

Lord Norton of Louth (Con): My Lords, in the few minutes available, I want to focus on the fundamental point deriving from the several measures of constitutional significance that appear in the Queen's Speech. Like many noble Lords in today's debate, I address what is missing.

The gracious Speech makes the case for something that is not in it. The same can be said of many Queen's Speeches since 1997. Successive Governments have introduced significant constitutional changes, but the changes have derived from no clear view of where we are going. Since the time of the Glorious Revolution, we have seen some major reforms, but they have largely been individual measures, each of which has had time to bed in before another change is made. However, in recent decades, we have seen almost constant change. We have introduced changes affecting the relationship between the state and the individual; between Parliament and the people; between the centre and the different parts of the United Kingdom; between the United Kingdom and other nations; and between the different organs of the state. The changes have been justified on their individual merits but, however good the case for the specific measure, it has impacted on the wider constitutional framework of the United Kingdom and done so largely without that impact forming part of the debate. Our constitution is changing,

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and changing quite significantly, without us having any clear idea of what we are doing to it as a constitution. We are too busy planting the trees, be it on devolution, human rights or cameral relationships, to have time to stand back and make sense of the wood. The Westminster system of government is in danger of being replaced by a shapeless forest of constitutional measures.

I have previously made the case for a constitutional convention. Many noble Lords have also made the case for one in today's debate. However, I would refine the terminology. Use of the term "constitutional convention" carries too much baggage; it is often taken to denote a body created to draw up a new constitution. My view is that this is potentially dangerous, given that we do not have the foundations for such a body to operate. What I favour is a body that can stand back and make sense of where we are. That must be the essential basis before we embark on any more grand constitutional measures. We need what, for want of a better name, I will call a constitutional convocation.

The Government are committed to particular measures. I appreciate that they cannot row back on those in the Queen's Speech. However, before going beyond them, I urge them to create, or rather to join with other parties to create, the mechanisms for looking at our constitution in the round—where we are now, how the different elements fit together, and the constitutional principles that underpin those arrangements.

A constitutional convocation could look—must look—at the relationship between the state and the citizen. The proposal for a British Bill of Rights could be encompassed within that consideration. In terms of making sense of relationships within the state, it would encompass inter-institutional relationships within the United Kingdom, the role of Parliament, the relations between the two Chambers and between Parliament and other organs of the state. I notice in respect of devolution that a new report from the Bingham Centre for the Rule of Law has concluded, as indeed have several noble Lords today, that the ad hoc approach to devolution has gone as far as it can and that a more systematic view is required. If the UK remains a member of the European Union, we need to address how that fits with our overall framework. Otherwise, we shall simply continue to do what we have done since we joined the then European Communities and that is, in terms of the constitutional implications of membership, play catch-up. We are too often in response mode.

In short, we can move—we need to move—from the current approach of generating measures that are disparate and discrete and look at our constitution as a whole. Let us take the measures in the Queen's Speech that affect different parts of the United Kingdom. It is not just that we have a Scotland Bill, a Wales Bill and a Northern Ireland Bill. We also have a Cities and Local Government Devolution Bill. I am not suggesting that we have a grand, all-encompassing devolution Bill—the one-size-fits-all solution identified by my noble friend Lord Dunlop—but I think that these measures make the case for standing back and making sense of how the different parts of the United Kingdom fit together. Otherwise, we are in danger of creating a rather haphazard and potentially unstable patchwork quilt of constitutional relationships. I am not arguing the case for some neat uniformity but rather saying that if we are to have a patchwork quilt, let us make sure we know what we are doing. We need to appreciate the overall effect rather than end, with bits thrown together without any thought to the wider consequences.

The only mechanism we have for standing back and looking holistically at our constitution is the Constitution Committee. However, it will have its work cut out this Session fulfilling its remit to report on each Bill of constitutional significance. If it has the time to fulfil the other part of its remit, to keep the workings of the constitution under review, and complete a full-scale review, it would be of enormous benefit. It is, though, a major undertaking, one that may be best suited in terms of time and resources to a constitutional convocation. As we address each constitutional Bill this Session, we need to keep in mind the wider picture. We need to stand back and address what is happening to the constitution of the United Kingdom. That is the core message that I take from the gracious Speech. I trust that it is one that will be heard by the Government. I look to my noble friend Lord Faulks to confirm that it is.

8.22 pm

Lord Cashman (Lab): My Lords, it has been an enlightening and enlightened debate, and there have been wiser counsels than mine own, but I want to concentrate on one particular aspect and express my deep concern at the Government's intention to publish proposals with a view to scrapping the Human Rights Act and proposing a British Bill of Rights.

I never thought that in my lifetime and in the 21st century I would see human rights, or rather the judgments based on the European Convention on Human Rights, become a political issue that could result in diminishing human rights and access to justice in this country. There are huge consequences to such an approach, both domestically and internationally, as well as consequences for our continuing membership of the European Union, a Union based on fundamental values, human rights and the rule of law.

Let me be clear from the outset what I think the Government's intentions are. They are to appease their right wing and the leader writers of the tabloids in particular and the right-wing press in general. It is about constructing a potential Bill which will deliver judgments that the Government believe they can live with and the public will approve of. It is a dangerous route of populism for a country built on the tradition of the protection of the individual both at home and abroad.

Access to the courts on issues such as human rights or the interpretation of such rights defines us as a democracy. I believe that the problems are with the judgments which have been delivered from the European Court of Human Rights, and from our own Supreme Court, when they have not fitted comfortably with the Government's view of human rights or those of the right-wing press. So we scrap the Human Rights Act, which has worked well—there have been many examples in this debate. Then we withdraw from the European Convention on Human Rights because we do not like the judgments delivered from that court, or indeed

the justiciability of such a court. What happens, then, when the Executive or some future Government do not like or welcome the judgments from the Supreme Court when based on a Bill of Rights? Do we scrap that Bill or do we place judges in the courts to deliver judgments that are palpable? The road ahead is worrying indeed and we will never appease the *Daily Mail*, the *Sun*, the *Telegraph* or the *Times*—none of them. We will have lost power to so-called populism: to the mob.

The fury and misrepresentation around judgments from the European Court of Human Rights in Strasbourg has bordered on the hysterical but I remind your Lordships that many rights exist in this country today because courageous individuals and organisations took their cases to that court. Before the Human Rights Act, they had to quite literally drag their cases through the domestic courts before they could have their rights recognised, then upheld, in Strasbourg. Even then, in some instances, Governments resisted.

The infamous judgment on the rights of prisoners to vote was, sadly, hysterically seized upon by most political parties but the European Court of Human Rights in Strasbourg did not state that prisoners should have the vote. It stated that a blanket ban was in breach of the convention, and so it is. Let the punishment fit the crime; if we believe in a Prison Service which is redemptive, should we not prepare our people to carry out their civic duties and responsibilities when they leave prison, including participation in democratic elections? There are myths—many myths—but I would rather have a system which could be abused by a small number of people than diminish the right to a fair hearing, or diminish the human rights of communities and out-of-favour minorities or individuals.

I believe that a civilised democracy—a civilised country—is judged by how it treats its least favoured, least revered and least loved individuals or minorities. On a personal note, I come from a minority which is still much maligned and misrepresented. Even today, our rights in some parts of the United Kingdom are still resisted or denied. The rights of lesbian, gay, bisexual and transsexual people are still not universally welcomed or accepted in the United Kingdom. Sadly, even in Northern Ireland, same-sex marriage is still not legal or available. I remember well that until the 1990s, we in our community had virtually no rights in this country. We now have them, due in great part to the courage of individuals and organisations such as Stonewall, which pursued individual cases through the courts to Strasbourg. The rights that I enjoy from the European Convention on Human Rights and the Human Rights Act—the rights that we all enjoy—are enjoyed because generations of individuals have had the courage to stand up against injustice, tyrannies and Governments to demand equality. They demanded not to be treated better but to be treated equally.

Let me conclude. On behalf of the least favoured and least popular, and in defence of the human rights of all and the principle that human rights are universal and do not stop at manmade borders or during manmade wars, I urge your Lordships to defend vigorously the Human Rights Act and the European Convention on Human Rights. It is better that our lives as legislators are made more difficult and we face criticism from populists than that the rights of another be sacrificed on the misconstructed altar of public opinion, which will shift and shift. I am very clear indeed on this. Judges and judgments are not there to please or to make the lives of politicians or Governments easy, or easier. They are there to make our lives difficult and, where necessary, to make us think again—to pause and hesitate—and never more so than in the realms of human rights and civil liberties.

8.29 pm

Lord Taverne (LD): My Lords, it is quite clear that in the next five years we will face a great constitutional upheaval. Major taxing powers for Scotland and government plans for English votes for English laws will both have profound implications for Wales and Northern Ireland, and then there is the issue of devolved power to cities with elected metro mayors. This hugely ambitious programme of constitutional reform cannot possibly be achieved bit by bit. The noble Lord, Lord Forsyth, made a magnificent speech that provided unanswerable arguments in favour of a constitutional convention. Such a programme must be coherent and acceptable to the different nations of the UK and should strengthen the union.

However, there is one missing piece, to make sense of the whole. We are going to face something that is in effect much more akin to a federal Britain. The question arises: how will these different elements in a much more federal Britain be properly represented? In fact this presents an opportunity: in a federal Britain we could then transform the House of Lords, which has resisted previous rather poorly prepared and unacceptable attempts to do so. We could have a new upper Chamber that in effect performed some of the functions performed in Germany by the Bundesrat. Such an upper Chamber could be greatly reduced in size. That would also cure our present intolerable overcrowding, which prevents the proceedings of this House from being as efficient as they should be.

There is another proposal in the Queen's Speech that has not been mentioned but which sets a profoundly undesirable constitutional precedent: a statutory limit on income tax and VAT. The new Government may well face a major economic crisis: our recovery is fragile because a sharp decline in productivity has caused a huge trade deficit, the largest in the OECD, that has been financed by the inflow of hot money. We are on our way to a new housing bubble caused by rising house prices. The eurozone may be in deep trouble if Greece is forced out, and foreign investors may get scared by the possibility of Brexit. That hot money may flow out very rapidly and cause a major crisis. If we face an emergency and the need for drastic measures to protect the pound, the Treasury's hands will be tied by its inability to raise taxes and it will be forced to rely on ever-deepening spending cuts.

Personally, I am completely out of sympathy with the Government's aim of a shrinking state. Lower taxes should not be our primary concern as a matter of principle. The lowest-taxed industrial societies are the most dysfunctional, as shown in that seminal book *The Spirit Level* by Wilkinson and Pickett. As the famous American judge Oliver Wendell Holmes observed:

"Taxes are the price we pay for a civilised society".

[LORD TAVERNE]
Contrary to Conservative belief, higher-taxed democracies on the whole, in the decades before the crash, had a faster, not slower, record of economic growth. We already have a society with huge inequalities. Income tax and, to a lesser extent, VAT are progressive. Cutting public spending even more will be deeply regressive. Moreover, at some point ever-greater austerity inflicted on the poorest in society may not work. An economic crisis will lead not to one nation but to an even more broken society.

I have one further point, which may comfort those who fear that we are in for a long period in the doldrums for the Labour Party, or the disappearance of the Liberal Democrats. In 1959, after a calamitous defeat for Labour, many forecast that they would never again see a Labour Government. Roy Jenkins, a very wise man with a great sense of historical perspective, wrote in an article at that time that things did not look good, but that we should remember 1902, when there was not a cloud on the horizon for Salisbury's Conservative Government, with the Liberal Opposition deeply divided in the aftermath of the Boer War. Within four years there was the greatest anti-Conservative landslide in history. Things may not prove quite as they look at present.

8.35 pm

Lord Empey (UUP): My Lords, it is interesting where the applause for that comment came from. At this late stage in the evening, it is hard to say things that are unique, but I welcome the noble Lord, Lord Dunlop, to the Front Bench, with the unbounded enthusiasm that we will no doubt knock out of him as time goes on.

The noble Lord, Lord Norton of Louth, pointed out that this year we will have a Scotland Bill, a Wales Bill and a Northern Ireland Bill. If that sounds familiar, it is because last year we had a Scotland Bill, a Wales Bill and a Northern Ireland Bill. It is immediately obvious to everybody that we have a Lego kind of constitution, which we are putting bits into and pulling bits out of as we go along, and there appears to be no overarching plan. This is very disturbing.

The convention that has been lobbied for is one model. I think that my noble friend Lord Trimble and I are the only Members of this House who were members of an elected constitutional convention. That happened many years ago and was a great success, was it not? It took another 20-something years to get to the point where we had an agreement. However, whether it is a convention or a commission or the Lord Chancellor appoints an advisory group or whatever—I would not be precious over the methodology—we need to have constitutional coherence in our policies in this country, which unfortunately is missing. We understand the vagaries of the political process and why it is the way it is. Things have happened—Macmillan famously commented, "Events, dear boy, events"—and we have been reacting to events. We are not directing events, we are not controlling events, and we are sadly not influencing events, which is a matter of grave concern.

I shall turn briefly to the devolution side of things, because obviously we watch with very great concern what is going on in Scotland. I have no doubt that in his demure, quiet and diplomatic fashion the noble Lord, Lord Foulkes of Cumnock, who follows me, will have a word or two to say on that. I believe that we are in severe difficulties, because ironically Nicola Sturgeon said that if a referendum were held on the European Union, all parts of the United Kingdom would have to tick the box to say yes. I did not see her go on to say that in the European Union if decisions had to be taken every part of the European Union would have to tick the box, because that is a totally different argument. We are not dealing properly with the Scottish question. We got so many things wrong. The question was wrong, the timing was wrong and the campaign was wrong. Everything was wrong, and we are reeling from that. As many Scottish noble Lords have said, we need to rethink our position.

My part of the country is Northern Ireland. As one of those who were able to assist my noble friend Lord Trimble in getting the devolution settlement in 1998, I am deeply disappointed at the way things have gone. I always felt that we could use the devolved Administration to do something different on behalf of the people. We are gradually reaching the tipping point where if things go on as they are at Stormont, one will be unable to say that it is helping the people of Northern Ireland. We are very close to that.

One of the reasons, and a mistake that we are making in devolution generally, is the idea of "legislate and forget": in other words, we draw up a piece of legislation, devolve the issue and Westminster walks away. That is a mistake. It was made in 1921. If Westminster had kept an active interest in what was happening in Northern Ireland and if it keeps an active interest in Scotland and Wales, we will avoid problems. "Legislate and forget" does not work. It merely reinforces what I have said before in this House: that devolved Administrations become ATM machines, the local politicians spend the money, and if there is not enough of it the evil legislators in London are responsible. We are not linking this Parliament to the money and to the people there. I am for devolution, but it has to be within a context and not simply, "Hand over and then forget about it". That would be a mistake.

Sadly, we are now facing another crisis at home. We have a Bill which the Minister has announced to implement the Stormont House agreement. As we stand here tonight, there is no Stormont House agreement. I hope that will change tomorrow when the leaders meet the Secretary of State and the Irish Government, and I wish them well, but I fear another press-gang coming along looking for more money. That is the mechanism that Sinn Fein has used to disguise the fact that what it is really doing in reneging from the Stormont House agreement is trying to protect its electoral interest in the Republic of Ireland next year, and it is prepared to sacrifice the interests of ordinary working people in Northern Ireland. We are losing at least £2 million a week, which is being taken out of our budget because of the failure to implement the agreement, and not only that: we are losing far more in what could flow from the Stormont House agreement. Hundreds of millions of pounds are being lost.

It is not purely down to the welfare issue. Sadly, I have to say, it is down to gross financial mismanagement by Stormont over a number of years. It was given its

budget for the year ending March this year in October 2010, and this year's budget in June 2013. Until the crisis last autumn, no action was taken to get the expenditure to meet the budget. For the first time since 1921, Stormont was about to default and had to go to the Treasury to get this Wonga loan to try to bail it out for this financial year, otherwise it would have defaulted. Now it is back in another mess. Not only is it not fully implementing the welfare but it is now borrowing hundreds of millions of pounds to pay off 20,000 workers, when it should have been gradually running the thing down over a period of years at effectively no cost because it would have been natural wastage. The reductions it is asking the Civil Service to make have not been made. It keeps asking it do more but then puts forward schemes to pay its employees off. It is paying them off, but at the moment it is only being allowed to borrow the money to do that. Now, because of the Stormont House agreement, it is not able to do that, so all those people have applied for a scheme that is currently endangered.

The voluntary and community sector is in an even worse position: some of the people have not had money for months because nobody knows what the budget is. That sector is doing such good work. It makes up 5% of the Northern Ireland economy and represents some of the most vulnerable people, yet it is living from hand to mouth. Some of the people who work for those organisations are in tears because they do not know what their future is and the money is locked up. That is not good governance.

I have to ask the Minister, and I hope he addresses this in the wind-up, whether more money is going to be paid to the parties, should they come here looking for it, or whether what we have in the Stormont House agreement is a solid figure that has to be stuck to. That is a fundamental question, and if we do not know the answer to that, what happens tomorrow may happen under false pretences. People need to know that and hear that. I hope that it works tomorrow, although I have my doubts.

The point I would like to emphasise and close on is this: we should not turn our backs on the institutions devolved from this Parliament. That was a mistake that was made before, and if we keep on going the way we are going we will repeat the same mistake again. I hope we will not do so, given the Scottish example. We need to fight for the union. We need to sell the case for the union and for togetherness, and to re-establish some British identity. I do not look upon myself as a separate unit that has floated off somewhere else. That is not what the union means to me. The whole purpose of it has to be set out clearly and articulated with some enthusiasm, and not simply left to others to articulate. I therefore ask the Front Bench to bear those things in mind.

Finally, I also ask the Front Bench to pay close attention to my noble friend Lord Bew, who made some excellent points. There are those who are trying to rewrite history. The number of victims whose names we never hear have just as much a case as those who happen to have support groups to push their case. If we go on trying to dig and tear at those scabs for ever, we will never get the peace that we seek and deserve.

8.45 pm

Lord Foulkes of Cumnock: My Lords, it is a great pleasure to follow the wise words of my noble friend—I think that I can call him that as I have known him for a long time—Lord Empey. I am not sure that I will be able to live up to his billing, but I shall do my best.

First, however, I want to try to dispel a myth. There is a myth going around that the SNP is a left-wing party. That myth arises because Nicola Sturgeon and Alex Salmond said that they could work only with a Labour Government and not work with the Tories, but nothing could be further from the truth. The SNP from 2007 to 2011, as a minority Government in the Scottish Parliament, relied on the Tory party and Annabel Goldie, now the noble Baroness, Lady Goldie, for its support. It would not have been able to get a budget through or to survive without the Tories. So that is not left wing.

The council tax freeze that the SNP has introduced is not left wing, either. I benefit from it—it is wonderful for me, in a nice house in Corstorphine—but people at the lower end of the income scale who rely on council services are losing out. That is not left wing. Then there is the so-called free higher education, which helps people who are relatively well off at the expense of college students. There are 130,000 fewer college students now than when the SNP started, who are unable to do vocational courses. That is not left wing. And then there is ScotRail. When the franchise came up, the opportunity was there to put it into public ownership, but the SNP continued with franchising and now it is in Dutch hands, being run by a Dutch company. That is not left wing. So there is not a shred of truth in the argument put forward, unfortunately successfully, by the SNP in Scotland. It is one of the reasons why the party did well, but nothing could be further from the truth.

I also take this opportunity of castigating the SNP for taking its eye off the ball. It has been so preoccupied with constitutional issues and the referendum in particular that the services that it has responsibility for at the moment—health, education, social work and justice in Scotland—have been neglected. The noble Lord, Lord Forsyth, mentioned the Scottish education system, which was once the pride of the world. In the past few years, we have seen literacy and numeracy rates go down in Scotland because of the SNP. Over the past four or five years, the astonishing thing is that the increase in expenditure on the NHS in Scotland under the SNP has been less than under the Tories in England. It is certainly not left wing and it has certainly occurred because the SNP took its eye off the ball.

Anyway, that is nothing to do with the gracious Speech, but I wanted to get it off my chest and I feel better for it. They are two important things. But I now get back to congratulating the noble Lords, Lord Lisvane and Lord Dunlop, as well as the right reverend Prelate the Bishop of Leeds, on three excellent maiden speeches. It reminds me of my maiden speech, not in here but in the other place, in 1979. Outside this place I would say that very few people would remember that—but, of course, in here everyone remembers way back, long before 1979. Even then, I raised the question of the constitution, right at the start of my parliamentary

[Lord Foulkes of Cumnock]
career. Rather more recently, in the Queen's Speech debate on 14 May 2012, I argued in favour of a constitutional convention moving towards a quasi-federal or federal system. I warned then that if we did not come up with a sensible, credible and above all stable alternative, we would be back at the precipice that we saw in the general election sooner rather than later. I can say that underlined, a fortiori, and even more so because of what has happened. That is why we need to find a credible alternative. I say to the noble Lord, Lord Dunlop—I will no doubt have other opportunities to do so when we get to the Bills that are coming through—that unless we find a credible, coherent alternative, nationalism and the separation of Scotland from the rest of the United Kingdom will become increasingly likely, if not inevitable.

That brings me to what we are getting from the Government. What are we getting? Instead of something coherent, we are getting EVEL, which really is evil, as so many people have said. It is not getting much support. Apart from the Minister, I do not think it has even had any support on the other side of the House. What will happen? Discussions and decisions that take place in Committee, when only English Members can participate on English Bills, could be overturned at a later stage. When I spoke informally to the Secretary of State, Mr Mundell, he told me that that was not likely to happen. However, it is a bit naive to say that that is not likely to happen.

The noble Lord, Lord Lawson, rightly said that it is ridiculous to have two levels of Members of Parliament. However, it is even more ridiculous given that it will not work in practice. As regards this place, no one has said anything about Scottish Peers—if they can be identified—not participating in English legislation. Therefore, unelected Members from Scotland are allowed to participate in English legislation but not elected Members from Scotland. Is that not ridiculous? It is absolutely ridiculous. We now have an opportunity to take a coherent look at this.

As well as EVEL there has been mention of the northern powerhouse and today we have heard about developments in the Midlands that are being pushed by the Government. However, that is not a coherent approach to this issue. The noble Lord, Lord Purvis, and I have set up an all-party group, of which a number of Peers and MPs are members, to push for a coherent solution. The noble Lord, Lord Purvis, has introduced a Bill on this subject. It will be interesting to see the Government's response when that Bill comes forward. It is a coherent way forward.

However, I recognise what the noble Lord, Lord Norton of Louth, said. We have to pay a lot of attention to what he says, not just because he is a Member of this House but because of his academic background and experience. I understand that the constitutional convocation, commission or convention—whatever we call it—needs to be established. Indeed, a convocation might be a more appropriate way forward, but something needs to be done to sort out all the muddle that exists and find a systematic—to use the noble Lord's word—way forward. The noble Lord said that the Constitution Committee of this House was too busy to do this work. That is a pity because this is the most important matter in the constitution. Even if the committee cannot undertake this work, I urge him and other members appointed to the Constitution Committee to point the way forward or at least to signpost or give a direction as regards what should be done. That could be done by the Constitution Committee in one or two sessions. I hope that others will take it up.

That brings me to my penultimate point.

A noble Lord: Thank God!

Lord Foulkes of Cumnock: Who said "Thank God"? I never did like some of the Liberal Democrats but now they are on our side I am told that I have to like them. However, even the Liberal Democrat who said "Thank God" might agree with what I am about to say. For some time I have been an advocate of first past the post for election to the House of Commons. The strong argument in favour of it, which I think even those who are sceptical about it are agreed on, is that it maintains a good constituency link and that Members in the other place are interested in their constituencies, run surgeries and are very much involved in their constituencies. That is a good thing which does not always occur in other systems that we have. However, we have got into a muddle on this as well. I take Scotland as the worst example again. In Scotland we have four electoral systems: in local government, we have STV; in the Scottish Parliament, we have the additional member system, which is a combination of first past the post and lists; in Westminster, of course, like the rest of the United Kingdom, we have first past the post; and in Europe we have the closed list—the worst of all, by the way. I do not know how we ended up with that.

I have now come round to the conclusion that that muddle could also be looked at by the convocation or the convention. If a Neanderthal like me—a dinosaur like me, one of the great first past the post advocates—can come round to that point of view because of the mess we are in, surely the Government and those who are sceptical about looking at this in a comprehensive, coherent, systematic way, as the noble Lord, Lord Norton of Louth, and others have suggested, can also think again. I know the pressures from civil servants. I sat in exactly the same office in Dover House that the noble Lord, Lord Dunlop, is now occupying. It is by far one of the best offices in Whitehall, by the way—it has the best view. When Trooping the Colour takes place everyone comes in and looks out; it has a wonderful view. But I remember going again and again to Cabinet committees and Labour Ministers—yes, Labour Ministers—coming up and reading out briefs that had been prepared by their departmental officials. Fortunately, because I was the Minister of State for Scotland, we did not have such a vested interest. I would say, "Wait a minute. We are here as Labour Members to implement Labour Party policy, not the departmental policy". That is why I think we need Ministers like our new Minister, the noble Lord, Lord Dunlop, and the noble Lord, Lord—

The Minister of State, Ministry of Justice (Lord Faulks) (Con): Faulks.

Lord Foulkes of Cumnock: No one can pronounce my name properly either. You know who I mean. By the way, we also have the noble Baroness, Lady Fookes, here today—we have the whole trio.

I hope Ministers will take away from this debate the fact that there are people like the noble Lords, Lord Forsyth, Lord Lawson, Lord Norton and Lord Purvis—people of all political parties and none—who are arguing in favour of some kind of coherent look at the constitution. I hope they will exercise their muscle, push this and say, "This is the considered view of the House of Lords. Let us in government consider it also".

8.57 pm

Lord Trimble (Con): My Lords, I start by echoing the praise which has been given throughout this House to the three maiden speeches that we have heard. We have also heard a number of other extremely good speeches, but I want to move on to my own.

I begin with a couple of what might seem like minor points. The noble and learned Lord, Lord Falconer, and the noble Baroness, Lady Hayter, referred in their speeches to the funding of political parties. I come with a suggestion which is borrowed from the German example. In Germany they have a process whereby the person filling in his tax form can tick a box and by doing so a proportion of his tax will then go to a particular body. They use the system in Germany for financing churches, but I suggest that we should use it here for financing parties. It would not mean people paying any more money; some of their tax money would be used for it. The support of the party would then come from ordinary people and ordinary voters. That may not be the exclusive way of doing it, but I suggest it because we clearly have a system that needs repair. It is one suggestion.

Another thing that may need repair is the provisions on human rights. I shall mention two things, one of which is really quite important but has been mentioned only in passing. It was in our manifesto and concerns the application of some aspects of human rights law to the Armed Forces.

Originally, the situation was quite clear: the Armed Forces were bound by the law on armed conflict, which is basically the Geneva conventions-plus. But in recent years—the European Court of Human Rights in particular has been guilty of this—human rights law concepts which previously had nothing to do with armed conflict have been brought into armed conflict law, and they are having very negative consequences there. I was at a conference a month or two ago where a number of persons from various countries, partly in Europe, partly elsewhere, were discussing this issue. A representative from NATO said that NATO is now very worried about the way in which human rights concepts have come into the Northern Ireland conflict. This needs to be fixed or our Armed Forces will become ineffective.

With regard to the manifesto commitment in the Queen's Speech for a Bill of Rights, I would be willing to see what comes along and I do not think that we should jump to conclusions. There is a lot of jumping to conclusions going on here but let us wait to see what comes. If it is a genuine British Bill of Rights, I do not see a problem. A number of people are saying that the European convention is embedded in the devolved arrangements for Northern Ireland and Scotland, but I do not see a problem there. If the legislative capacity of the Northern Ireland Assembly is such that it cannot legislate in contravention of the convention, and if it cannot legislate in contravention of a British Bill of Rights, I do not see a problem. Therefore, something has been turned into a problem when it is not really a problem.

Earlier, we heard an excellent speech from my noble friend Lord Forsyth. I found myself agreeing with virtually everything he said, but he made one really big point which we should all take to heart and think about, and that is the consequence of this general election for the Smith proposals. Those proposals were endorsed by Labour, the Conservatives and the Liberal Democrats in Scotland, who, between them, got three seats. However, the proposals were not endorsed in the manifesto of the SNP. Instead, it went down the road of fiscal autonomy and got 56 Members. In that situation, in normal politics you turn round and say that the Smith proposals are dead because they have been rejected by the Scottish electorate. However, we are continuing with the proposals. One axiom from literature is that you should never reinforce failure, but that is what we are doing. I think that we should take what happened there as an opportunity to stand back and think about those proposals.

That brings me to what has been coming from a number of quarters here: the suggestion that we need some sort of convention or body, the sense that constitutional matters have been handled on a piecemeal and short-term basis, and the feeling that putting the union on a sounder footing needs more than just repeating a phrase; it needs to be thought through. That thinking through should come not from continually scratching the sore of devolution but from looking at the other end and asking what the core matters of our union are—the matters that must be uniform throughout the state. We cannot say that everything is up for grabs; there has to be a core element.

I came across a suggestion of that from a colleague in the Commons, John Redwood. In his blog last week he said:

> "Our union is above all a currency, benefits and tax union",

and of course for those things there must be uniform standards throughout the kingdom. You can change some aspects and you can devolve matters, but legislation will set the standards. Administration can be devolved and there can be minor variations in these matters but unpicking too much will unpick the whole system. Consequently, we need to think about that as well.

As we know, welfare is a problem at the moment in Northern Ireland. It is an anomaly. For the other devolved bodies, there is no power to legislate for welfare. There is in Northern Ireland, although purely by accident. In 1920 there was no welfare state, so there was no provision for the reservation of welfare legislation to Westminster. After the creation of the welfare state, the Northern Ireland Parliament stuck rigidly to its step-by-step policy and copied GB welfare legislation on to the Northern Ireland statute book en

[LORD TRIMBLE]
bloc. Northern Ireland voters accepted this. They did not hold Stormont responsible for the ups and downs of welfare policy, knowing that the policy was made in London and that overall they were beneficiaries from it.

That has now been disrupted, but before coming to the specific causes of that disruption, I want to say that if a policy is to be uniform throughout the kingdom, is it really then fair for London to expect the local representatives in a particular part of the kingdom to bear responsibility for the heavy lifting of having that uniformity? I do not think that it is fair but that is what is happening with regard to Northern Ireland.

One then has to turn to the role of Sinn Fein in this matter. A problem arises because Sinn Fein is a single party that operates in both Northern Ireland and the Republic of Ireland. If it were two separate parties, the problem would not arise. Sinn Fein might evolve organically into separate parties but that will not happen this year or next year, although it is something that may well happen. However, Sinn Fein's chief objective at the moment, as mentioned by the noble Lord, Lord Empey, is next year's elections in the Republic. Because Sinn Fein in Dublin opposes austerity, so it has insisted that the party in the north must do the same. There is reason to believe that the northern party tried to adopt a more sensible line but that it was dragged back into line.

The second point to make about Sinn Fein is that once it has said something in public, it will insist on that even when it is clearly bad for it. It foolishly thinks that this makes it look strong. We have seen these characteristics demonstrated over recent months and it is silly to think that they will change.

Last week, the Secretary of State for Northern Ireland was reported as saying that there was a move in the direction of bringing back the power to legislate to Westminster, which I have suggested before. But it was said that the Secretary of State was thinking that there was still some way to go on this. Why dither when the only consequence of waiting is that hundreds of millions of pounds are taken out of the budget, which would involve huge tax cuts in Northern Ireland? The Secretary of State could cure that tomorrow simply by taking steps to bring back legislation. No doubt Members will have noticed that Peter Robinson, the First Minister of Northern Ireland, has endorsed that proposal on several occasions. There may be a fear that if that is done somehow Sinn Fein will react negatively to it—a fear which I think is completely misplaced. If it does something to damage the Assembly, voters in the south will punish it next year, and it knows that. What it does will be limited.

I shall briefly mention the policy of English votes for English laws. I am indebted here to a point made by the noble Lord, Lord Lisvane, which I heard at a conference we were attending in St Anne's College many months ago. Apparently, the clerks in the Commons had looked to see how many times a measure had been carried without the support of a majority of Scottish Members. They found that in a 10-year period, that had happened only in the order of four times. Therefore, it is not a big problem.

My final point on that is quite important: the measures in the Commons are supposed to bite on things that relate exclusively to England. If a Bill triggers a Barnett consequential, it is not exclusively English. If it triggers a Barnett consequential, all the people in the devolved areas should be involved and should not be kept out. That is crucial. I have not heard that said and it needs to be borne in mind.

9.07 pm

Baroness Kennedy of The Shaws (Lab): My Lords, I join colleagues in welcoming our new Lords and thank them for their contributions today. I look forward to hearing from them in the many months and, I hope, years to come.

Like others, I have grave concerns about the legislative programme which will be coming before this Parliament. Echoing fears expressed already, I think that one of my major fears is that the pursuit of an agenda to eviscerate public services, to play around with our membership of the European Union and to tamper with the rights and freedoms of our citizens by, perhaps ultimately, abolishing the Human Rights Act, will drive a deep wedge between parts of this kingdom. I also fear that that might accelerate its demise as a union.

The Prime Minister promised one-nation governance, but that means genuinely having to take into account what the election results meant. I know that people on the other side of the House are enjoying a victory, but they have to remember that it involved only 36% of the electorate—I remind Labour Members that in 1997 when the Blair Government got in, again it was on as low a section of the electorate. Governing as a one-nation party means speaking to the many and going beyond just the traditional Conservative voter.

I am sure that the defeat of Labour is giving a great deal of contentment to Conservative Members of this House, but that will be short term. It seems to me that the real message of the results of this election is that people were not very taken by the old political parties and their way of doing business. We have to recognise that the political class is distrusted by a large section of the population. That distrust will grow if the promise to govern for all of this kingdom is not kept.

Many people have expressed a certain amount of relief that there will be further consultation before legislation on a British Bill of Rights, but why has it taken so long? The Conservative Party has included in its manifestos since 2002 its desire to create a British Bill of Rights and to abolish the Human Rights Act. It has had a lot of time: it has set up committees and had the benefit of lawyers on the Conservative side advising it. Why is it that it cannot put together a coherent Bill?

I sat on the commission set up by the coalition Government on whether there could be a British Bill of Rights and we consulted. If consultation is what is wanted, let me tell you that we consulted up hill and down dale only a few years ago and further consultation is not necessary. The Government needed to pause because of the complexity of what is involved and because, as described by the noble and learned Lord, Lord Woolf, a lot has happened since the Human

Rights Act came into being. The developments that have taken place have been important and it will be hard to unravel them now. The plan for a British Bill of Rights was ill conceived, incoherent and, in my view, dangerous.

The impact on Scotland should not be taken lightly. When we created the Scotland Bill at the initial time of devolution, we said that change would involve the consent of the people. Having consulted in Scotland over the possibility of a British Bill of Rights, it is clear that it would be seen as the arrogance of Westminster. The Scots are content with the incorporation of the European convention and do not want it interfered with.

We also consulted in Northern Ireland. While I smiled when the noble Lord, Lord Trimble, suggested that all would be involved would be putting in a small amendment suggesting that there had to be compliance with the British Bill of Rights rather than the European Convention on Human Rights, that small amendment would be highly contested by a large number of those persons who signed up to the Good Friday peace agreement. I suspect that the non-dominant community would find that hard to swallow.

We also have to think about its impact on foreign policy and our treaty obligations and the effect it would have on our reputation worldwide. Britain is a beacon for the rule of law imbued with commitment to human rights. I say this as chair of the International Bar Association's Human Rights Institute. Britain is looked to around the world for guidance and inspiration on these matters. I worry that this has been kept in the back pocket as a card to be played if the referendum goes towards maintaining the European Union; that it is to give red meat to Eurosceptics.

Others have spoken about the many misconceptions about the European Court of Human Rights and its role. It is not a final court of appeal. Our Supreme Court is exactly that—it is our Supreme Court. I am not going to rehearse what other people have said. Our constitutional situation is serious and we will make it more serious by interfering with some of the things which actually are about empowering citizens.

The triumph of the Scottish National Party north of the border in the general election is not fully understood by many people in this House and elsewhere. It is not understood, certainly, by sections of my own party nor by the Liberal Democrats or the Government. Many people voted for the Scottish National Party but not because they are nationalists; it was not about disliking their cousins in England or "Braveheart" intoxication. If you feel that, you are deluded.

The people of Scotland voted the way they did as much from a feeling of disconnect with central Government here in Westminster as from nation-bound interests. They felt that their traditional party MPs had taken them for granted for too long. People should reflect on that, rather than throwing stones at those who ended up winning the election. The Scottish people are not stupid. They felt that they were not getting responsive, accountable government, and that is what they voted for. It was not about whether they thought they would be richer or poorer, but whether their society might be fairer. When considering one-nation governance, we should remember that they were concerned that their tradition of social justice was under threat. I urge the Government and all the parties represented in this House—because the Scottish nationalists are not here—to realise that that is what the majority of Scottish people were concerned about.

I will not rehearse the arguments about what devo-max will involve, and so on, but I do want to say that we have to have much more serious discussion about constitutional matters. I have been involved in arguments about reform and the need for a different kind of voting system for almost 20 years. I chaired Charter 88 and the Power inquiry, and they were saying the things that I hear in opposition: the light goes on, and people suddenly realise that perhaps the voting system is not fair, that they want decisions to be made closer to where they live, and that sometimes systems are not working in a modern and sensible way.

I, too, want to endorse the creation of a convention. I hope that when the Government say that they will govern for all of this kingdom, they do so in a positive spirit. There was negative campaigning, and the negative way that Scots felt they were talked about really went to their hearts. We cannot go on like that. I hope that we start having a conversation about why this union is a good thing, and why the Scots, the Irish and the Welsh, as well as the English, play a vital part in creating it.

9.17 pm

Lord Roberts of Llandudno (LD): My Lords, it is difficult for me to deny that the UK is in the middle of a constitutional crisis of earthquake dimensions. We deceive ourselves if we consider the present crisis to be a mere blip that will soon disappear, and that normal service will be resumed. It will not.

I join the many others—the noble Baroness, Lady Kennedy of The Shaws, has also joined them—who have called for the immediate establishment of a constitutional convention. Mere tinkering will be like putting a sticking plaster on an open wound, and short-term "solutions" will be no solution at all.

The Scottish referendum was a political tsunami that resulted in the incredible election result of 7 May: 56 nationalist MPs were elected. The whole political face of Scotland was transformed, and every policy of this Conservative Government was made to look foolhardy: for instance, retaining four nuclear submarines that are based on the Clyde. Fifty-six elected nationalist MPs, plus the Member for Orkney and Shetland, are against that policy. How on earth is it going to be implemented, with some 56 MPs against and perhaps two in favour?

As for the referendum on European Union membership, Scotland, Wales, Northern Ireland and England all might want to vote in different ways. Surely we need a referendum that takes note of the different ways in which the various countries of the United Kingdom want to vote.

There is not only the Scottish question: I can see Wales in turmoil if it is ever alone in partnership with England. It will be in turmoil because we do not want to be 40 constituencies as against more than 500; it just will not work. Whatever happens, this is very important and there will be many consequences.

[Lord Roberts of Llandudno]
The situation is far too serious. Can this Conservative unionist Government learn to govern in a federal way, because surely it must be in that direction and in that of a constitutional convention that we need to move? The relationships within the United Kingdom must be handled with vision and sensitivity.

I appreciate the devolution developments, and I would also like to say how much I appreciate the developments introduced by Mr Tony Blair, when we had referendums for Scotland and Wales which resulted, of course, in the Scottish Parliament and the Welsh Assembly. The Government can introduce legislation in the other place even though they have a majority of only 12. We must remember that only 37% of the electorate who voted supported them, and only 24% of the electorate as a whole. One proposal is to redraw constituency boundaries, as if that would solve anything, but they still received only 37% of the vote and a quarter of the total electorate. Does that give the Government a real and legitimate authority?

I read Andrew Rawnsley's article in yesterday's *Observer*, which should make us all think very seriously about how the distortion of the will of the electorate is so blatant in the UK. Perhaps I can speak of Wales, and indeed it would be difficult not to do so. We have 40 constituencies in Wales. In the past, of course, there were just two parties and therefore two candidates in each constituency. You were with the Whigs and the Tories or the Liberals and the Conservatives. When there are only two candidates, there is a clear decision: it is one or the other. It is 50.1% as against 49.9%, but there is a clear decision. However, as we have seen the development of other parties, the results have changed so that we have minority representation. In 1997, of the 40 constituencies in Wales, 30 returned MPs with more than 50% of the vote, with some scoring 80%. On 7 May this year, of Wales's 40 constituencies, only four returned MPs with more than 50% of the vote. This shows that in 36 constituencies, candidates were elected with minority support. Can we question their legitimacy when there is minority representation? This needs urgent attention. Even those who have previously opposed a more representative system—we have heard some of them in the debate—must surely think again. Can this sort of minority representation really be justified?

Before I conclude, I should also like to say that we must look carefully at the financing of elections and campaigning in the United Kingdom. When I read Andrew Rawnsley yesterday, I learnt that there had been £15 million for the Conservative Party, while my poor party had £3 million. It is becoming an American system where money buys seats. This is something that needs immediate attention, and that is why I am wholeheartedly in favour of a constitutional convention. It should be set up immediately so that its recommendations can be in place by the time we have another general election.

9.23 pm

Lord Truscott (Non-Afl): My Lords, I, too, wish to congratulate the Minister, the noble Lord, Lord Dunlop, on his maiden speech. He has a very challenging brief and I am sure, on the evidence before us, that he will rise to it. I also commend the right reverend Prelate the Bishop of Leeds on a thoughtful and thought-provoking speech. I look forward to further advice from the noble Lord, Lord Lisvane, particularly on the appropriate application of the Salisbury convention to legislation in the current parliamentary Session and other matters.

There has been much discussion about how polling organisations got voting intentions wrong in the run-up to the Scottish referendum and the general election. However, the answer does not lie in shy Tories in England or the 30% of people who only decided on how they were going to vote on polling day, either in the general election or in the referendum. Rather, it reflects a relatively new phenomenon: the canny British electorate are increasingly keeping their own counsel and do not reveal it to polling organisations. That will make pollsters' lives difficult and their future predictions even more problematic. Nevertheless, the outcome of both votes showed a clear result. In Scotland, elections henceforth can be won only from the centre-left—or, in a nod to the noble Lord, Lord Foulkes of Cumnock, at least by parties that are perceived to be on the centre-left. In England, they can be won only from the centre, which has always been pretty obvious to anyone who learned the lesson of the Blair era and the wilderness years before it. Liz Kendall, a Labour leadership contender in the other place, has been reported as saying that if the party fails to learn the right lessons, it could be out of power for a decade or even indefinitely. That is a sobering thought, but accurate in my view.

Following the general election and Labour's defeat, it has become something of a truism that the two greatest issues facing Parliament are Britain's place in Europe and Scotland's place in the United Kingdom. From the American war of independence through to the end of the British Raj in India and of apartheid in South Africa, history has taught us, if nothing else, that it is fruitless to oppose a genuine will for self-determination. The majority of Scottish people, as witnessed by last September's referendum vote, have not yet crossed that particular Rubicon. Yet the momentum is clearly with the Scottish nationalists, as shown in last month's general election. Our Houses of Parliament in Westminster should face up to that reality. As welcome as the measures for further Scottish devolution mentioned in the gracious Speech will be north of the border, I fear that they do not go far enough. Additional control over some taxation, including VAT, and some domestic expenditure will quickly become a focus of dispute between Holyrood and Westminster. Grudgingly ceding power in dribs and drabs will play into the hands of nationalists, who will for ever ask for more than was granted. Each transfer of power will be constantly portrayed in the media as a loss for Westminster and a victory for the SNP. A war of attrition will follow, exhausting and irritating all sides.

To prevent the eventual dissolution of the union, the Government should be prepared to offer Scotland much greater fiscal autonomy. The noble Lord, Lord Forsyth, strongly opposed the concept of full fiscal autonomy for Scotland, and I agree with him that the SNP should be careful what it wishes for. However, there is a danger that, short of a wide-ranging agreement,

there will be a persistent and enervating constitutional battle between Scotland and Westminster that will lead to antagonism, disgruntlement and even eventual independence. Instead, Scotland should have a much greater degree of control over its own domestic affairs. But with those rights should come responsibility. The Scottish nationalists should no longer be able to have it both ways, complaining about a lack of powers while squeezing the rest of the UK to pay for their very ambitious and, frankly, irresponsible spending plans. The Barnett formula, mentioned by the Minister in his opening speech, which the late Lord Barnett himself opposed in his latter years, should be scrapped and, along with it, the £1,600 per person per year subsidy which Scotland receives from Westminster. The Scottish nationalists themselves should face up to the £8 billion or £9 billion deficit, depending on the oil price, which full fiscal autonomy for the Scottish economy would imply. According to the Institute for Fiscal Studies, Scotland's financial deficit for last year was 40% higher than that of the UK as a whole. The Treasury recently estimated that the Scottish Government faced a £40 billion funding shortfall over the next five years, over and above the existing UK national debt.

If the Scottish people want free tuition and free prescriptions, then so be it, but they should not expect English, Welsh and Northern Irish taxpayers to pay for them. In the real world, that means that they have to pay for them either by tax rises or through spending cuts elsewhere. I agree, by the by, with the noble Lord, Lord Lawson of Blaby, that there is a real question over the issue of borrowing.

I also welcome the Government's commitment in the gracious Speech, referred to by the Minister, to English and Welsh votes for English and Welsh laws. The question is how to achieve that. There have been many suggestions during today's debate which I hope the Minister will take on board and reply to. Parliament here at Westminster should evolve so that there is a clear separation between English, Welsh, Irish and Scottish devolved issues and those affecting the UK as a whole. The Scottish people did not vote for independence in September or this May, but they unquestionably did vote for a much greater say over their own affairs. Your Lordships' House and Her Majesty's Government should take that message to heart and act on it.

9.30 pm

Lord Gordon of Strathblane (Lab): My Lords, I join most of the other speakers today in supporting the idea of some form of constitutional body which will ensure that we do not develop things on a piecemeal basis. I am reluctant to call it either a convention or a convocation because both of those imply rather large bodies. I do not think we need that. I think we need something like a planning authority, as it were. We need a committee that will comment, and have considerable reputational force behind its comments, on any proposals for constitutional change that are brought forward. It should be a committee of both Houses and some others. Let us be perfectly honest about this: MPs would be less than human if they could examine dispassionately possible further ceding of the levers of electoral influence to Brussels or their devolution to Scotland, Wales or Northern Ireland. There is a certain feeling of a loss of their own importance. Quite apart from the threat of asbestos, there is the threat of a functional void for Westminster if too much is devolved away and ceded to Brussels.

One of the advantages of coming from Scotland is that you at least run into MPs on a weekly basis. The great problem of this place, one of the things that makes it quite dysfunctional, is that the two Houses do not talk to each other nearly enough. That is remedied if you are waiting in a lounge for a delayed aircraft or travelling down on the train together. I have new travelling companions. I do not know many of them but I intend to get to know them—I refer to the 56 SNP MPs. First, I will commiserate with many of them because I am quite sure that they did not all expect to get in and quite a few of them will have had to make fairly drastic career decisions at the last minute, as well as family care decisions to cope with their work down here. They come down here and then realise, "Hold on, if I do my job properly I am really talking myself out of a job because if we get more devolution there will certainly be a fairly drastic reduction in the number of Scottish MPs and if we get independence there will be none at all, and I have given up my career which I might not get back into". I am genuinely sympathetic. I admire their enthusiasm and I hope it does not sound patronising when I say that I just hope it does not go sour. I have a horrible feeling that you can no more vote austerity away than you can declare Scotland a midge-free zone. It is just not like that. If you earn four and spend five you cannot keep on doing that. You can either cure the problem quickly or make it longer, more drawn-out and more expensive. There will in fact be greater austerity if you slow the process down.

Unlike the noble Baroness, Lady Kennedy, I do not know what caused the tsunami in Scotland. I intend to listen to the Scottish National Party MPs to see if they have any idea of what fuelled their success. To some extent, the success is not quite as dramatic as it appears to be because the SNP got 45% in the referendum. In a way, 45% beats 55% any day of the week if the 55% is divided three ways, and that is exactly what happened. To be fair, the SNP share of the vote went up from 45% to 50%, which is a rather crucial figure. So there was that incremental growth but it did not come from nowhere. What they had, which rather surprised me, was tremendous discipline—perhaps that is an unkind word. They fired the enthusiasm of everybody who had voted yes in the referendum and persuaded them to vote SNP. What caused it? Was it a desire for independence? Nicola Sturgeon said that the vote had nothing to do with independence. She said that repeatedly on all the television programmes. It therefore seems strange that she then thinks that Westminster must give Scotland more powers, because the two things do not remedy each other. Her main case was "vote against austerity", particularly when it is coming from nasty people in the Conservative Party.

Scotland's position is a rather dodgy one financially. I am not saying that Scotland could not be independent, but looking at the rather bulky White Paper, I see that there are about two pages on finance. On page 75 of the document is the Scottish budget. Although the figures on oil revenues were drastically wrong, one

[LORD GORDON OF STRATHBLANE]
could forgive that being published at the time of the referendum. It was perhaps a legitimately optimistic view of what the oil price and revenues would be. However, once you know that that is a false figure, you are, in my view, in duty, conscience-bound to publish a retraction. A private company would be in jail if it did not do that. The SNP published a budget based on an oil price more than twice what it now is in reality. Not only that but, partly at the insistence of the SNP but also for reasons of encouraging jobs, which everybody in the UK can see the advantage of, we have reduced the rate of tax. The overall universe that is being taxed has gone down and the rate at which it is being taxed has gone down, and that has a dramatic double whammy effect on the Scottish budget. But a double whammy is not enough. Nicola Sturgeon then says that they are going to spend more and borrow more. The Scottish budget then becomes a total mess. The Institute for Fiscal Studies says that there will be a minimum of a £6 billion hole. The trouble with billions and millions is that they sound the same. Everyone gets very worked up about where George Osborne is going to find £12 million pounds of welfare cuts. By way of comparison, the Scottish £6 billion is, proportionately, the equivalent of six times that welfare cut. Where is that going to come from in Scotland?

I hope that the SNP will move amendments to the Scotland Bill demanding full fiscal autonomy, so that it can be pored over in Committee, particularly in this place, line by line. The SNP will, I hope, have the courage to admit that full fiscal autonomy would not benefit Scotland. If it has the courage to admit that, it will incur the wrath of bodies such as the Scottish Socialist Party. However, let me assure the SNP that that wrath will be as nothing compared with the wrath of the Scottish people if it signs up for full fiscal autonomy only to discover after the event what a disaster it is economically.

9.37 pm

Lord Armstrong of Ilminster (CB): My Lords, I join others who have congratulated the new Peers who made maiden speeches this evening. I thank them and look forward to the contributions that they will make. I should like, in particular, to congratulate the noble Lord, Lord Lisvane. I cannot emulate his manner but, as to matter, he will find that imitation is the sincerest form of flattery.

In this country we are much given to claiming with an air of regretful apology, but actually with modest and self-satisfied pride, that we have an unwritten constitution. We are not, we feel, the kind of country that needs a written constitution. It is not quite true to say that our constitution is unwritten. Over the years, it has been extensively described and written about by learned academics such as Lord Blake and Professor Vernon Bogdanor, but even some of those who have had to operate it have contributed to the discussion. Now, we have the *Cabinet Manual*. But the *Cabinet Manual* explicitly describes existing practice; it does not prescribe future practice or exclude or limit the possibility of change. There is no official and authoritative document, an Act of Parliament or whatever, that defines the constitution, as it were, set in stone—as seems to be the fashionable thing these days.

All constitutions need to be amended or revised from time to time as circumstances change and as social or economic developments require. In the United States, they have a written constitution which can be amended only by Act of Congress. In the Republic of Ireland, the constitution can be amended only by a referendum. In this country, without a written constitution, changes are made as we go along by means of precedent broadening out from precedent. The constitution can be tweaked as needed, not without notice or discussion, and sometimes not without an Act of Parliament, but without a prescribed and elaborate procedure for organising the change.

That has been possible, I suppose, because the constitutional state of the United Kingdom has for many years, until recently at any rate, been relatively stable. It has been a unitary state. We have known where powers lie, who has responsibility for the exercise of those powers, and who is accountable for the outcomes. Some powers are still prerogative powers of the Crown. But for statutory powers, Parliament at Westminster has been sovereign.

All this is changing. The processes of devolution and the principles of subsidiarity are fundamentally altering the distribution of powers and of responsibilities. Some powers formerly exercised at Westminster have gone to the European Union. Some have gone, and more are going, to the parliaments and assemblies of the constituent nations of the United Kingdom. Some will be going to the new northern powerhouse and eventually, no doubt, to other regional powerhouses in England.

All these changes presage a continuing diminution of the powers and responsibilities of the Parliament at Westminster. Here and in the other place, we need to face up to the implications of this. I hope that the United Kingdom will remain the United Kingdom, but it seems that it is inevitably becoming a federal United Kingdom, not a unitary United Kingdom. This will be a great change: perhaps a necessary and inevitable change. To many perhaps, it will be a welcome change, maybe even a change for the better. If that is how it is to be, we shall increasingly need to design and define the structure of the United Kingdom and its parts, and the distribution of powers and responsibilities within it.

I have not hitherto wanted to see a written constitution, a constitution codified and made statutory. The move to a federal United Kingdom may make that not only inevitable but necessary. I do not think that the written constitution need necessarily be a statute, though that is no doubt a possibility; it might well be preferable to make it a code, rather like the *Highway Code*, based on statute.

The decisions on these issues will be taken by elected parliamentarians at Westminster, Edinburgh, Cardiff and Belfast. But, as the right reverend Prelate the Bishop of Leicester and many others reminded us, these political decisions should not be taken just at random or in isolation as immediate reactions to a political problem of the moment; they should be coherent and consistent with a system of constitutional principles.

I therefore share the view of those who think that we should set up without delay a constitutional convention or a royal commission—whatever you like to call

it—to consider these issues and to make recommendations. The membership of such a body should include not only lawyers and academics but people with experience in central and local government. Governments and Parliaments would of course not be bound by the recommendations of such a convention or commission. They would be free to take whatever decisions seemed right to them but the proceedings of such a commission would enable a wide range of views and ideas to be brought together and put in the public domain. Its deliberations and recommendations would provide a framework and a set of principles against which a series of coherent political decisions could be reached and judged.

The outcome of such a process could be the written constitution which I believe we are going to need, and could make possible the establishment of a stable constitutional framework for the development of a federal United Kingdom in continuing membership of the European Union, but let us not be too optimistic. If your Lordships look back at major constitutional change in this country, I do not think that it has ever been worked out by something like a constitutional convention or a royal commission. It has emerged out of crisis and been in a situation which the politicians have muddled through. It is extraordinary how new muddle quickly morphs into old tradition.

9.46 pm

Lord Sanderson of Bowden (Con): My Lords, first, let me say how pleased I was to hear the three maiden speeches. I am particularly pleased to welcome the noble Lord, Lord Dunlop, to the Front Bench. His knowledge of Scottish affairs is very great indeed and we look forward very much to having him here when the Scotland Bill comes before this House.

I should say at the beginning, too, that I agreed with everything that the noble Lord, Lord Gordon of Strathblane, said, and everything he has said saves me saying it all over again. I commend anyone who was not listening very carefully to look at exactly what he said, because it spelt out a lot of what went on over the last few months in Scotland.

I make it very clear that I support the implementation of the Smith commission's recommendations and disagree with those who say that they should be superseded by fresh proposals, and much further devolution along the lines of devo-max, which would bring with it the consideration of the consequences of a black hole funding gap. I agree with my noble friend Lord Forsyth that the Government should produce a White Paper on the consequences of full fiscal autonomy. Many people, particularly in Scotland, would welcome seeing this, although I doubt whether the Scottish Government would enjoy reading it. Let us deliver what was promised by Smith and examine the consequences before going further down the road.

Sometimes I wonder whether other parties realise the extent of the powers already devolved. It will be important to assess the performance of the Holyrood Administration in areas such as Scottish health and Scottish education, both fully devolved, at the Scottish elections taking place next May. Judging from recent reports on the performance of schools, the forthcoming elections for Holyrood will be a test case for the current Administration. I am concerned about those in all areas in Scotland who genuinely object to what they see being done by a party with an overwhelming majority and do not speak out for fear of being taken apart on social media or elsewhere. The leadership of the SNP needs to watch for and stamp out such intimidation—I hope that it would—and so do all those who take an active part in Scottish politics.

In line with the Strathclyde proposals published in May 2014, which I have here, I strongly approve of putting the Scottish Fiscal Commission on a statutory footing, to be fully independent of government. Its functions should include the publication of official tax forecasts of its own and the regular analysis of Scottish public finances. This is essential so that the fiscal powers devolved to Scotland can be monitored and compared with other parliaments within the UK. As the noble Lord, Lord Lawson, said, we should monitor the freedom to borrow with the pound sterling.

I make a personal plea to the Front Bench that they do not give power over corporation tax to the Scottish Parliament. As a businessman in Scotland, I would strongly deplore that move. In addition, as energy powers were correctly reserved to Westminster by the Labour Government, would it not make sense to give planning powers for nuclear plants like Torness and Hunterston back to Westminster, giving some hope of those plants having a future and thus making energy a truly reserved power, as the SNP has set its face against any such renewal?

Many speakers in this debate have talked about a convention, a conventicle or whatever. The Strathclyde commission, which I have referred to already, recommended that a committee of all the parliaments and assemblies of the UK should consider the developing role of the UK, its parliaments and assemblies and their respective powers, representation and financing. It is important to understand the importance of this Parliament in the union and how to build on the respective powers of the devolved bodies.

Many will say that this is a further move to a federal state. Actually I think we are almost there, but the arrangements are lop-sided and, unless urgently reviewed, could fail with disastrous consequences. This will become more acute as discussions start on the powers to be restricted to English MPs and plans for the northern powerhouse. Would this vehicle not be the best place to review the outdated Barnett formula and start basing UK help on the respective needs of each part of the UK? The House of Lords report on the Barnett formula that was published a few years ago would be a good starting point for this matter.

In summary, we want this Bill for Scotland to become law as soon as possible, to test the record of the Scottish Government at the 2016 election and to discuss in particular how the new tax powers for Scotland are going to help those of us who live and work in Scotland but still ensure that Scotland is an integral part of the United Kingdom and avoid the undoubted continued wish of the SNP to break it up.

9.52 pm

Lord Lennie (Lab): My Lords, it is getting late; we are getting towards the fag-end of this debate and feeling tired. Much if not all that needs to be said has

[Lord Lennie]
been said—with great respect to the noble Lords who will follow my remarks. I have culled those remarks hugely, and really have only three things to say.

First, I wish to address the remarks of my noble friend Lord Dubs; unfortunately he is not in the Chamber at present, but no doubt he will read what I have to say about letterboxes and his experience of a bad back while campaigning. I had a similar experience in Redcar and I was with two postal workers at the time. I said, "You guys must be fed up to the teeth with these", and they said, "Funny you should say that. We are, and we're doing something about it". Apparently, there is a European health and safety standard, number whatever it is, and as we speak they are pursuing a case about a minimum height for letterboxes, through whatever channels are available, to standardise them—and not before time, we campaigners would say.

I associate myself with the remarks that have been made in defence of the Human Rights Act. It is an extremely important piece of legislation. I am not going to repeat what has been said about it, but defend it we will and defend it we must. It is now part of the fabric of our country and our role within the whole of the European Union.

I associate with those who are calling for a constitutional convocation or convention or body that will do the business of bringing together an assessment of where we are as a British constitution and, more importantly, where we intend to go. Those who know me well know that I am not critical of Tony Blair. He was my leader, he brought me in to work for the Labour Party, and I had a thoroughly stimulating time in that role. One thing I think we—not him personally, but we as a government—lost sight of was, having set up the Scottish Parliament and the Welsh Assembly, we thought we had reached the end of that policy. We thought that was the job done whereas, in fact, it was only the start of matters and we had not thought through the consequences year on year, decade on decade thereafter or, indeed, the consequences for England and the United Kingdom as a whole.

There are two questions I would like the Minister to address in his response. One is about English votes for English laws. All I have read about this seems to point to any such law being completely unnecessary because no one has yet persuaded me that a law has yet been passed that does not have consequences beyond England, given that all laws are governed in part though Treasury funds, and how Treasury funds are allocated in one part of the United Kingdom has consequences for all other parts of the United Kingdom. Will the Minister enlighten us about whether in the last Parliament any law was passed that could be described as an English-only law and therefore the province of English MPs only? I also associate myself with the remarks about two tiers of MPs being a complete nonsense in the other place.

My second question is about the position of the north-east, which is where I am based. I am from Tynemouth. Currently, the north-east is the new squeezed middle in Labour Party parlance—we have consigned the previous squeezed middle, along with set-in-stone pledges, to somewhere hidden from view, hopefully for the rest of time. The new squeezed middle is between the devo-max proposals for Scotland, the devo-Manc proposals, as they are now known, around Manchester and the devo proposals agreed, as I understand it, for Leeds and Sheffield and possibly for Liverpool and associated councils thereabouts. In the north-east, we have a combined authority. Seven local authorities combined some time ago to co-ordinate a range of important activities, plans and policies around the north-east, and they have been doing a lot of work in preparation for discussions with government to gain power and control over a range of matters, such as economic development, planning, housing, social care and so on. The question is: are the Government saying that, however good the proposals, however important the matters raised, however good the policies produced, the precondition will be an elected mayor in the north-east or the parts of the north-east that combined to seek to take advantage of the Government's proposals to devolve responsibility and budgets within England? If that is the case, as my noble friend Lady Quin said, it makes a nonsense of the purpose of the policy. Is it to improve conditions and standards and opportunities for citizens throughout England, or is it to impose a system of governance that the centre will control and impose upon all parts over England over time in order to retain the whip hand?

Finally, on matters of devolution and constitutional change, I would conclude by saying that if we act in too great haste, we will come to regret our actions for a long period of time thereafter.

9.59 pm

Lord Smith of Clifton (LD): My Lords, in this debate there has been a clinching new argument for Scottish independence: the vast majority of noble Lords who overran the seven minutes spoke with Scottish accents.

As many noble Lords recognise, the constitution of the United Kingdom risks being shipwrecked, but there is not enough recognition of its parlous condition in the gracious Speech. I will speak about two aspects of the constitution: first, the nature of election campaigning, on which some noble Lords have already commented; and secondly, the political demi-monde, which is populated by a plethora of informal bodies that are largely unaccountable to the public.

The general election last month was not an edifying experience for the most part. The leaders of what used to be called the three main parties performed appallingly in their different ways. They ranged from the negative to the indifferent or irrelevant. In the later stages they came up daily with new policies, which were thrown around with abandon like confetti, in an attempt to garner votes. That these were ill thought out, still less properly costed, is of less import than the context in which they were announced. They were presented amid a chorus of synonyms such as "triple-locked", "ring-fenced", "promised" or "pledged", together with uncrossable "red lines". These attempts at reassurance reflect how far politicians perceive the distrust with which the electorate regard their promises. This language goes along with the increasing use of referendums and the introduction of hypothecated taxation, as in the case of the last Parliament's enshrining in law that 0.7% of GNP will be devoted annually to international aid.

We were a representative parliamentary democracy; we are dangerously near to sliding into a plebiscitary one. This may be inevitable, given the fragmentation of the party system and the rise of social media, with its instantaneous and ubiquitous transmission of largely undigested political news, but it should not prevent us from looking at the longer-term consequences of this trend.

My second main point is on the continuing rise of what has been called "tentacular government", a vivid description which I adapt and borrow from the father of the noble Baroness, Lady King, the eminent political theorist Professor Preston King. I use it to describe the mushroom growth of all sorts of agencies, practices and personnel that constitute the political demi-monde. Its development has continued unchecked and lacks any coherent formal basis. It is yet another example of the constitutional nightmare that remains largely neglected.

I refer in part to the legion of quangos and other non-departmental public bodies, which cover a plethora of adjudicatory, advisory and monitoring institutions, and include regulatory agencies, whose performance is often criticised, particularly over the lifetime of the previous Parliament. Their recruitment practices involve the "revolving door" method, where you get "agency capture" by the very industries that they are meant to regulate.

Then there was the adoption of GOATs as junior Ministers appointed to this House. Their numbers were increased by Gordon Brown. The practice carried on in the coalition, and it continues unabated by the new Government. Their tenures are too often very brief and their performance too often poor, although there are one or two exceptions.

Added to those appointments was the recruitment by the coalition, with the noble Lord, Lord Browne of Madingley, being the lead, of non-executive directors to Whitehall departmental boards. They are not subject to any parliamentary oversight, so we cannot know if they are at all beneficial, but they add to the jungle that forms so much of the executive branch of government.

Then there was the "nudge unit", the Behavioural Insights Team, which was set up in 2010 to persuade people to follow policies that have not been formally enacted. In four years its staff grew from eight to 40 by 2014. It has now been privatised. A year later, the Major Projects Authority was formed to improve procurement throughout Whitehall, to which was added, in 2013, the Commissioning Academy—to produce 1,500 procurers dispersed countrywide. To top it all, a chief executive to run Whitehall departments, under the head of the Civil Service, one John Manzoni, originally from BP, was recruited in 2014. We then have "policy tsars", another Blairite invention continued by successive Governments. A King's College London study showed that over 300 were in post between 1997 and 2014. Then there is the extensive use of SpAds; there were 81 in the coalition. The latest innovation is UK Government Investments—UKGI. Can the Minister explain the precise constitutional status in the world of tentacular government?

To these innovations has been added the related and again increasing recourse to outsourcing by contracting out to management consultants and private sector companies the provision of services previously undertaken by the Civil Service, police, armed services and other state institutions. This goes way beyond the boundaries of the old notion of the night watchman state as formulated by the Victorians. They defined it as the state keeping to itself a monopoly on matters to do with defence, diplomacy and the enforcement of internal law and order. Now a whole host of mercenaries are deployed in all these activities.

Successive Governments have been motivated to follow this practice, taking it as axiomatic that private sector techniques are invariably superior to those of the public sector and are easily transferable. Efficiency and cost-cutting are the inevitable benefits to the public, it is claimed. It is amazing how this can be said with a straight face. Vast tracts of the private sector, notably the banks, insurance, auditors and retailing, continue to reveal failures on a grand scale, involving heavy fines and penalties and now beginning to incur criminal investigations. Again, PFI and PPP schemes as well as other things have cost the public dear, and some of the privatised contracts have had to be returned because they could not carry them out—notably Hinchingbrooke hospital.

I could go on, but it would be a tedious recitation. The important thing is to recognise that this demi-monde needs to be scrutinised and evaluated. Disparate and occasional media and academic commentaries on aspects of this underworld, and the related nomenklatura that has grown up to service it, does not adequately explain its wider implications. Rather, it serves to feed the growing cynicism and alienation with politics on the part of the public.

The new Government are expected to abolish the Political and Constitutional Reform Select Committee in the Commons. That is a significant hint that little will happen. Will the Minister in winding up please explain the reasons for abolishing that committee at this time? Its abolition will add greatly to the burdens of your Lordships' Select Committee on the Constitution.

The Prime Minister seems to acknowledge that there is a need to address the problem of fragmentation in describing his new Administration as a one-nation Government. That will have as much credence as Mr Cameron's promotion of the big society. Remember that and all it achieved? The present constitutional crisis would defy a modern Walter Bagehot to describe it and make proposals to repair the situation. It is beyond the range of one individual. As so many noble Lords have said tonight, a constitutional convention is what is needed. Without that, the present constitutional muddle will make good material for a latter-day Gilbert and Sullivan operetta: "The constitutional theorist's lot is not a happy one".

10.08 pm

Lord Black of Brentwood (Con): My Lords, although he is momentarily not in his place, it would be remiss of me not to welcome my noble friend Lord Dunlop to this House, as he and I first worked together in the Conservative research department some 30 years ago. It is good to have him here. I also associate myself with the remarks made by the noble Lord, Lord Bew, about my friend Sir Brian Cubbon, whose exemplary commitment to public service was in the very best traditions of the Civil Service. We mourn his passing.

[Lord Black of Brentwood]

I want to address an issue of fundamental constitutional and legal importance, free speech, in particular with regard to the debate that is beginning about the future of the Human Rights Act. I declare my interest as executive director of the Telegraph Media Group.

I strongly welcomed the commitment in the Conservative manifesto to "defend press freedom" and,

"continue to defend hard-won liberties and the operation of a free press",

alongside specific pledges on the protection of journalistic sources. I am sure none of us needs reminding about the crucial role of a free press. If we did, we need look no further than the role the press has played in uncovering the squalid corruption at the heart of international football, for far too long brushed under the carpet by those who should have been scrutinising and regulating it.

It will be the role of this House to make sure that the Government live up to those commitments on free speech, particularly in relation to a number of the Bills we will be receiving that could have a significant impact on freedom of expression. We should be on our guard. For instance, we concentrated a good deal at the end of the last Parliament on the inadequacies of the Regulation of Investigatory Powers Act, which was being regularly abused by the police and local authorities to spy on journalists. I therefore welcome the forthcoming investigatory powers Bill, which is intended to modernise the law and bring in appropriate oversight and safeguards for media investigation, reporting and protection of sources. The devil will be in the detail of those vital clauses and we must seek to ensure that they really do provide a "shield law" to protect journalists and their sources from intrusive surveillance. We cannot afford another RIPA, rushed on to the statute book without proper scrutiny of the serious impact it could have on freedom of expression.

We shall also have to look carefully at the extremism Bill, which will take the state into potentially difficult areas of censorship. We all want to see an end to the vile outpourings of extremist groups preaching hate and terror, but not in a way which undermines our own essential liberties. In other areas I am extremely pleased to see that there is to be a serious root-and-branch reform of the bail system, limiting pre-charge bail to 28 days in all but exceptional circumstances. In recent years the abuse of the bail system to punish journalists for suspected crimes, for which in the overwhelming majority of cases they have now been found not guilty, has had a profound chilling impact on press freedom. These reforms will go a long way to ensuring that this shameful position, which has already destroyed a number of lives, can never be repeated.

The main point I want to make surrounds the issue of human rights, about which we have had a huge amount of heat in recent days but precious little light. Indeed, it is dismaying that so many lobby groups are already trying to skew what should be a debate based on the facts by, in my view, wholly erroneously linking Labour's Human Rights Act, which I believe to be a constitutional nightmare, with the maintenance of the fundamental freedoms which are every Briton's birthright. The truth is that we enjoyed them long before the Human Rights Act came along, and we will continue to do so long after it goes, as I believe it must, at least in its current form.

As I made clear in a debate in this House back in May 2011, I am an unashamed admirer of the ECHR, which was established, as we have heard, after World War II to limit the power of the state—something which, as a Conservative, I wholeheartedly support. Over the years, great good has come from the convention, which has helped keep the peoples of Europe free and been a beacon of liberty for others in the world who do not enjoy the freedoms that we do.

As someone who cares passionately about free speech and is involved in the business of publishing, I know how important Article 10 on freedom of expression is, for instance. Newspapers have relied on it many times in the past to tackle reactionary legislation, including the libel laws which we reformed in the last Parliament, and will do so again, not least in an inevitable challenge to the draconian terms of the Crime and Courts Act on exemplary damages, which passed through Parliament with no scrutiny or, indeed, concern for the convention rights in 2013.

From a personal point of view, I am only too acutely aware of how the ECHR has helped bring about human equality, something from which I have benefited. The truth is that the ECHR was a fundamental part of our lives long before 1998 when this Act changed everything. As happens in many other countries, if someone believed that the state was not living up to its ideals, they could take a case to Strasbourg where we would be required to find a remedy for any breach. It was a common-sense system which worked well: it ensured that we maintained our fundamental human rights; that the courts could not be overruled; and that Parliament remained sovereign. It was the Human Rights Act that reversed this constitutional settlement, not the ECHR.

I know that many were disappointed that the gracious Speech contained no immediate commitment to legislate to repeal the HRA. I was not. I think it was a mark of great wisdom by the Government and an understanding that the damage done by the HRA is so far-reaching and so complex that it will take time to work out how to undo it. Indeed, one of the problems we have is that the Human Rights Act was in fact put on the statute book without enough rigorous consultation or scrutiny, and with accompanying rhetoric that this was merely a piece of technical and tidying-up legislation which could make it easier for people to take the Government to court. The White Paper accompanying the Bill said that it would, in line with the wishes of the architects of the convention, simply,

"enable people to enforce their Convention rights against the State".

But that was not the case. The legislation went far further than that. By making the courts public authorities with a duty to enforce convention rights—as well as importing Strasbourg jurisprudence into our legal system—it ushered in a constitutional revolution.

If this fundamental change to our parliamentary and legal system was foreseen by its architects, it was never revealed—and that is one reason why it should

go. If it was not foreseen, and all this has happened by accident, then that is another reason why change is essential.

I shall not go into the whole area of privacy—where I saw at first hand how the warnings that my noble friend Lord Wakeham gave this House about the way that the Human Rights Act would allow the courts to usher in a general law of privacy went unheeded. But that is now exactly what we have.

In his brilliant lecture at University College in December 2013, the former Lord Chief Justice, the noble and learned Lord, Lord Judge, dissected with great rigour the problems that have emanated from the manner in which we incorporated the ECHR. He said:

"Thomas Jefferson would have forecast that this assertion of judicial power was inevitable. He wrote in 1820 ... 'It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions'. He was worried that the Constitution would become 'a mere thing of wax in the hands of the judiciary'".

I believe that, addressing those issues today, Thomas Jefferson would have applied them to the Human Rights Act. Undoing this mischief is one of the most serious issues facing this Parliament. It will take time to tackle. Let us have a serious consultation before legislation is brought to us. But let us ensure that it is a consultation based not on prejudices and myths but on facts. The Human Rights Act is nothing to do with our fundamental rights, which will long outlive a piece of constitutional vandalism.

10.17 pm

Lord Soley (Lab): Listening to the contributions on the constitution today has left me feeling rather more optimistic than I have felt for a very long time about the possibility of getting consensus on the way forward. I include in those thoughts the opening comments by the noble Lord, Lord Dunlop, which I thought were quite thoughtful. I know that he cannot use the dreaded phrase "constitutional convention", because it is not the Government's policy, but I hope he and his colleagues on the Front Bench will take back to the Prime Minister the very strong feeling, coming from all parts of this House, that we need some form of constitutional convention to get us out of the situation that we now find ourselves in.

If the Minister does take that back, he may well be asked, "What do they mean by a constitutional convention?". He has had a few suggestions today, but let me say that, first of all, it has to be a process. There is already a bit of an example, which my noble friend Lord Foulkes referred to. With the noble Lord, Lord Purvis, he runs a committee which I have attended a number of times and which includes Members of all parties and both Houses and also many local government officers and councillors. It is already discussing aspects of what needs to change, particularly around the area of devolution.

One of the key questions that a constitutional conference will have to address is: what is the United Kingdom for? I think it was the noble Lord, Lord Lawson, who pointed out that you need to have a sense of identity. I have been educated and have worked and lived in England and Scotland. I have never thought of myself as English; I have never thought of myself as Scottish; I have always thought of myself as British and as a typical mixture of these islands. I also remember—I cannot quote dates on it, but it must be 15 or 20 years ago—when I began to notice that the English flag was being waved much more frequently in England than was the union jack. That was a significant change. The same was happening in Scotland, although it was far more advanced there because of the long history of the use of the saltire, but in both cases the use of the local flags—if I may call them that for the moment—was overtaking the use of the national flag, the union jack.

The change in language will also be noticed. In this respect, the Scottish National Party has been extraordinarily effective in its use of language. It suddenly became the "Edinburgh Parliament", and Westminster became a remote colonial Government who were imposing some terrible rule on the Scots. Of course, the danger of that argument is that, when you talk to people in Shetland and Orkney, they refer to Holyrood in Edinburgh in much the same way as the SNP refers to Westminster. The same is true when you talk to people in England. You do not have to go very far outside London—and I mean not very far outside London—to hear people referring to the Westminster Government as though, again, it is some remote thing.

One issue that we have to address in all this—and it underpins what happened in the recent election—is the collapse in support for the two major parties. The Labour Party and the Tory party have become shadows of their former selves, and the same is obviously now true of the Liberal Democrats. The temptation for people to look for a sense of unity and to try to find something more locally is not surprising. I suggest that it is also in the nature of modern industry and modern economies that people look to make decisions closer to their own area. That is profoundly important, and it is why devolution is so important, but that then takes us back to the question of what the UK is for.

The danger is that we will be a group of separate entities all squabbling among ourselves, much as happened before the Act of Union. Later, as Alex Salmond might like to remember, Bonnie Prince Charlie wanted to bring back the divine right of kings, which, fortunately, was not what most of the Scottish and English people wanted at the time. The temptation to break up in that way is very great and we have to address it. If we are going to address it through a constitutional conference, we have to make sure that we have the right links between parliamentarians of both Houses, between local authorities and, as someone else mentioned, between all the people outside; otherwise, you are in danger of having politicians lecturing the public when they are already regarded with some suspicion by the public.

One of the most troubling things is the loss of confidence in politicians. We all know that—we have known it for some time—and there are many reasons for it. However, I also think that that confidence can be won back because the joy that the SNP is no doubt feeling—fair enough; it won a particularly big victory—will not necessarily last. I managed to achieve a majority in one election of some 20,000, which was a bigger majority than I had ever had before by a very long way, but I always reminded myself that it was not

[Lord Soley]
because I was the most popular politician; it was because I was the least unpopular and the Tory party was infinitely more unpopular at that point than we were.

The same happened recently. Both after the election and on many occasions before it, people said to me, "I didn't want to vote for the Tories, but I couldn't bring myself to vote for you". In other words, the Tory party is not necessarily the most popular party at the moment but it is the least unpopular, and that should remind all of us that we address this by recognising that the public have lost a lot of confidence in the constitutional structure of this country. If you had tried to discuss the constitution on the doorsteps during the election, you would not have got very far—people would not have been very interested—but when you asked people, "Do you have any confidence in the way the country's being run by government?", or by the local authority or whatever, very often the answer was, "No, they're all in it for themselves".

That is a very important message because it is really saying that the constitution is not working. If we who are making it work—or trying to make it work—can grasp that message and work at it, we can begin to offer the public the structures that they need. But we need to work out what those structures are. Quite rightly, a number of comments have been made that, over the years, we have made so many changes that now there is a lack of clarity, which brings us back to the constitutional conference. I ask the noble Lord to take back that we need the constitutional conference and to avoid please the EVEL option of English votes for English laws.

Why is that so dangerous? Why was it so dangerous when the Prime Minister used the fear of the Scottish nationalists controlling the Labour Party in the election? It is dangerous because it waves the English flag in front of the Scottish flag. If you do that, you provoke the very divisions that we all fear. It is a fatal mistake. One can make the point, as did my noble friend Lord Foulkes, that the only major party which did a deal to get the SNP in office was the Tory party for about four years in the Assembly. However, that is not the key issue. It is that, if you say "English votes for English laws", and use that as a fear factor in the election, you create the feeling in Scotland of them and us, which plays right into the hands of the SNP. I understand that it is done because we all want to win elections, and the Prime Minister did it rather well. So full marks if you are looking at it from that point of view.

However, that part is over and we have to put it in the past. It has come out a lot in this debate that we have an opportunity to try to formulate a process that we will call, for the want of a better term, a constitutional convention, which has to work out what the United Kingdom is for. Apart from obvious things such as foreign policy, defence and so on, it is also about a sense of equality between the parts of the United Kingdom. I always felt that we made a fatal mistake when we allowed people to have cheaper educational fees in Scotland than in other parts of the United Kingdom. Again, it gave a difference. Those are the issues that need to be addressed. The constitutional conference is the way to do it. I urge the Ministers to take this back because it has been a common theme from so many people in this debate.

10.27 pm

Lord Ramsbotham (CB): My Lords, I join others in congratulating the outstanding maiden speakers, particularly my noble friend Lord Lisvane. I address my remarks in particular to the noble Lord, Lord Faulks, who I am delighted to see reappointed to his post. On 28 May in the other place, the Member for Hammersmith lamented that the Queen's Speech contained no legislation specifically to deal with prisons. In reply, the new Secretary of State said:

> "I will be honest: although I would not use the word 'crisis', there are difficult issues to be addressed in our prison estate … to ensure that they become places of rehabilitation as well as incarceration. Some steps that were taken by my predecessor to help transform rehabilitation are a very promising way forward".—[*Official Report*, 28/5/15; col. 290.]

I would have been happier if he had said which steps he found promising and had mentioned the difficulties to be addressed for probation. But this is not the occasion for exploring whether offender management is or is not in crisis. Rather, in line with what other noble Lords have said in relation to other issues, such as the constitution and human rights, it is an opportunity to call for reasoned and careful consideration before any further forward movement.

The policing and criminal justice Bill announced in the gracious Speech claims to allow a range of criminal justice reforms that,

> "will aim to better protect the public, build confidence and improve efficiency".

Our debates on this will be the poorer for the retirement of Lord Goodhart, Lord Mayhew, Lord Phillips of Sudbury, Viscount Tenby and Lord Lloyd of Berwick, who contributed so much to the work of this House on such issues over many years.

As regards prisons, the two main provisions of the Bill are the long-awaited introduction of manageable judicial oversight of the bail system, which should end the denial of bail for months and even years, and ensuring better outcomes for those experiencing a mental health crisis, including the prohibition of the use of police cells for those under the age of 18. But it is the last sentence of the announcement that gives me the most cause for hope. It says:

> "We will be considering what changes might be needed over the coming weeks and will bring forward more detailed proposals in due course".

When dealing with anything as unpredictable as offenders, evolution is a much wiser approach than revolution, certainly when you are flying in the face of evidence and advice. The noble Lord, Lord McNally, has pointed out that the Ministry of Justice can expect more cuts. Therefore, Mr Gove would do well to observe that well-tried adage of stop, look and listen before taking any steps along the way chosen by his predecessor. In doing so I suggest that he notes the following three points.

No one knows the cost of imprisonment, by which I do not mean how much is given by the Treasury to the Ministry of Justice and then allocated to prisons:

I mean the cost of what needs to be done with and for every prisoner if they are to be helped to live useful and law-abiding lives. Without knowledge of that cost, no one can know the size of the shortfall and, therefore, what cannot be done with and for offenders.

Secondly, unlike any other operational organisation I have ever come across, with the exception of high-security prisons, no one is responsible and accountable for any direction between the Ministry of Justice and individual prisons. Every school, hospital and business has named people responsible and accountable for departments, so why not directors of local training, resettlement, women's, children's and young adult prisons, and someone responsible and accountable for the management of lifers, indeterminate sentence prisoners—here I agree with every word spoken by my noble and learned friend Lord Brown of Eaton-under-Heywood—sex offenders, foreign nationals and the elderly? At the same time, why not implement the recommendation made by my noble and learned friend Lord Woolf in his seminal report on the riots in Strangeways and other prisons 25 years ago and included in the only White Paper on prisons, *Custody, Care and Justice*, published in 1991? This was to group prisons into regional clusters so that no prisoner is held too far from home, which, with a job and a stable relationship, is the factor most likely to prevent reoffending and allow local organisations to rehabilitate local prisoners. A regional offender manager should be responsible and accountable for supporting prisons and probation in his or her region from local resources.

My final point is not entirely in Mr Gove's gift but pressure from him is essential if it is to be actioned. Recently ministries have not been very good at co-ordinating their different contributions to particular issues. I have long felt that this situation would be eased if one Minister was nominated to lead required co-ordination. Two issues facing the Ministry of Justice now highlight that need. First, under the Care Act, which includes all prisons in England, local councils are responsible for assessing and providing for prisoners who may have care and safety needs. I fear that unless someone is made responsible and accountable for making that happen, nothing will happen. Secondly, 23 members of the Prisoner Learning Alliance have called on Mr Gove and the Department for Business, Innovation and Skills to give greater priority to education in the regime and culture of prisons.

I was encouraged that the Secretary of State admitted that there were serious issues to be addressed in the prison estate and indicated that consideration was clearly on his agenda rather than yet more headlong change. I therefore ask the Minister to assure the Secretary of State that if he is prepared to stop, look and listen he will find that many experienced people are only too ready to give him their evidence-based advice.

10.33 pm

Lord Flight (Con): My Lords, I add my congratulations to the noble Lord, Lord Dunlop, on his most thoughtful speech. When I was the Member of Parliament for Arundel and South Downs, he and his wife were the most agreeable constituents and I wish him every success in the demanding and difficult area that he is taking up. I also congratulate the right reverend Prelate the Bishop of Leeds and the noble Lord, Lord Lisvane, on their excellent maiden speeches.

I wish to say a few things on the Scottish issue, the West Lothian question, the Human Rights Act and devolution. I very much agreed with the contributions of the noble Lords, Lord Forsyth of Drumlean, Lord Lawson of Blaby and Lord Gordon of Strathblane.

On the Scottish issue, "Gang warily" is my starting advice. There is the danger of repeating the unhappy history of Irish nationalism in the late 19th and early 20th centuries, even though Ireland and Scotland have very different histories. Scotland does not have Ireland's historic justification of having been oppressed by England as a colony; rather, Scotland was an equal partner with England in the history of the British Empire. As I think the noble Lord, Lord Lawson of Blaby, pointed out, we are not going to be able to deal with the situation correctly unless there is some revival in British nationalism. There might also be something to learn from the rise and decline of Quebec nationalism.

I know a lot of Scots living in England, and I think the Scottish diaspora, which is essentially very strongly against Scottish independence and critical of the SNP, needs to be organised and to create a political organisation to make its voice heard and to ensure that, in the event of any further vote, Scots working in England would have the vote in Scotland.

The biggest single problem is that the opposition in Scotland is divided, as other noble Lords have pointed out. There really needs to be a common unionist ticket for those opposed to the SNP to vote for. Although it sounds a feasible solution to give Scotland fiscal independence, to my mind it is not so easy in practice, as other noble Lords have pointed out. Scotland would need to contribute to areas such as defence, the Foreign and Commonwealth Office and overseas aid, and it may be more difficult than it appears to delineate the ownership, let alone the size, of oil reserves and revenues. It is clear, as the noble Lord, Lord Gordon of Strathblane, pointed out most eloquently, that the Scottish economy would suffer badly from fiscal devolution, and not just by the ending of the Barnett formula subsidy. Many Scottish businesses may well look to migrate to England, where the tax regime may be more generous. Politically—perhaps the most important aspect of the lot—unless there is a single effective Unionist opposition, there is the danger of one-party national socialist government, which would be very difficult to shift.

On the West Lothian question, in practice delineation here is as difficult as ever. Much apparently English legislation—for example, Finance Bills—would have some knock-on impact for Scotland. The noble Lord, Lord Lawson of Blaby, made the point that the whole issue might better be dealt with through relative representation at Westminster, with parts of the UK that were substantially devolved being, in a sense, underrepresented rather than overrepresented here.

Given the experience of the last 15 years, I strongly support the abolition of the Human Rights Act and its replacement with a new Bill of Rights. The long and ridiculous battle to deport Abu Qatada more than illustrated the need in that regard. He was held by the courts to be a danger to the public, but more than

[LORD FLIGHT]
10 years after proceedings began the Strasbourg Court of Human Rights ruled that he could not be deported, on an argument that had been previously dismissed by the House of Lords. Human rights laws, and particularly the Strasbourg Court of Human Rights, have prevented the removal of many illegal immigrants and foreign criminals from the United Kingdom. I was particularly pleased that my noble and learned friend Lord Mackay of Clashfern clearly set out the fundamental point that the Strasbourg court is superior to the British courts and can overrule them.

It is important to note that a potential withdrawal would not jeopardise peace in Northern Ireland. A new Bill of Rights incorporating all the original articles of the European convention and other British rights such as trial by jury would be consistent with the Good Friday agreement and would allow Parliament, not Strasbourg, to decide where the balance between rights lies.

With regard to devolved affairs, I support what I would call the Boris Johnson agenda, and would add only that municipalities should be allowed to raise funds for infrastructure investment projects via their own bond issues, as is the case today in the USA and was the case in the UK until the Attlee Government abolished the power. The one problem I perceive is where local government is not doing what it ought to be doing, such as childcare services in Birmingham. I think that there need to be some reserve central government powers to address that sort of situation.

I would normally have spoken in the economic debate, but I do not have a great deal to add to what the Government are already doing most successfully, other than to make sure that they sustain the wonderful entrepreneurial revolution going on in the UK and prevent small businesses being burdened with further UK or EU regulation. Potentially, the greatest risk is that of getting bogged down and mishandling the Scottish issue. It seems to me somewhat ironic that, while the eurozone is calling for coming together fiscally and certainly needs to have transfer payments to avoid the uncompetitive problems of southern Europe, in the case of Scotland we are potentially heading in the opposite direction, with fiscal powers being devolved and transfer payments coming to an end. The threat of that to the Scottish economy is really quite serious—I would not say a Greece, but certainly of southern European proportions. Getting Scotland right is going to be the single most important issue for the British economy.

10.41 pm

Lord Howarth of Newport (Lab): My Lords, democracy is ailing. The unity of our United Kingdom is in peril. It is entirely possible that by the end of this Parliament, we shall be heading towards a fragmented United Kingdom and a greatly diminished Britain. The responsibility on legislators is enormous, and the responsibility on Ministers in particular is enormous. The responsibilities that fall on the shoulders of the noble Lord, Lord Dunlop, are peculiarly difficult and sensitive. I congratulate him on his appointment and I wish him success in his work. As I listened to his speech, which I found to be of great interest—I look forward to listening to him on many future occasions—I was, however, made none the wiser as to the means by which the Government will go about achieving their strategic objectives of keeping Britain within the European Union and maintaining the integrity of the United Kingdom. I can anticipate that by the end of this Parliament, it is quite possible that the worst will have occurred. The English will have voted to come out of the European Union, the Scots and the Welsh will have voted to stay in; the noble Lord, Lord Dunlop, will be alongside his right honourable friend the Prime Minister and they will be both be scratching their heads, saying, "What on earth do we do next?".

Many noble Lords have advocated a convention, commission, conference, conversation, convocation or whatever to review the clutch of interlocking, complex, difficult, sensitive and important constitutional issues with which we are faced. I favour such a discussion taking place. In fact, I favour a series of such discussions. It is a free country and no one needs to wait for the permission of the Government to set up a constitutional convocation. Indeed, the noble Lord, Lord Purvis, and my noble friend Lord Foulkes have already set up their own convocation. Important academic work is being pursued at Kings College London and University College London to examine this range of interlocking constitutional issues. I think it would be of immense help to us all, when the reports are forthcoming, for a public debate to be precipitated. We must hope that the media let us have a public debate of really high quality to match the seriousness and importance of the issues. But I would recommend that the political parties should keep their powder dry. They should be very cautious about commissioning such work other than within their own inward counsels and taking part in such work. Certainly there will be wise and experienced political elders who might wish to take part, but the formal position of the political parties ought to be reserved because it is extraordinarily difficult to get this right. All sorts of people will be able to produce grand notions about how we should reform the constitution, but one of the great features of constitutional reform is unintended consequences, as we saw in the case of Scottish devolution. My own view is that the parties would be wise to hold back, reserve their position and see what is needed.

In a gracious Speech that is heavily overloaded, I counted eight constitutional measures. The noble Lord, Lord Lisvane, whose witty, elegant and wise speech I, like everybody else, enormously enjoyed, counted only seven. The noble Lord, Lord Black of Brentwood, seems to have counted a number more. At all events, it is unbecoming and foolish of the Government, I think, to introduce gratuitous constitutional measures. Given the number and range of unavoidable difficulties, why do they add to them? A Government with a majority of only 12, if they follow the convention that constitutional measures are taken on the Floor of the House of Commons, are going to be in immense difficulty. Your Lordships' House will of course wish to play a constructive and positive part in scrutinising these various measures that are proposed for constitutional reform, and no doubt the Government will be wise enough to heed our advice. Indeed, I hope that the Government will be wise enough to help us to perform our duties even

better by following the advice of the noble Lord, Lord Jopling, and taking steps to at least legislate to set a sensible limit on the size of your Lordships' House on a rational basis.

Some of the measures that have been proposed are unwittingly constitutional. There is at least one, which may be the one that I noticed and the noble Lord, Lord Lisvane, did not count in his tally. I refer to the proposal that tenants of housing associations should have the right to buy their properties. Housing associations are charities, and it seems an extraordinary thing that a Conservative Government should take it upon themselves to distrain the assets of charities—great historic foundations such as the Guinness and Peabody trusts. I cannot recall anything to compare with the pillage of the housing associations since the pillage by Henry VIII of the monasteries. Where will the Prime Minister turn his grasping hands next—to the endowment of Eton College, to the endowment of the University of Oxford, which has just raised an extra £2 billion to increase their charitable assets or even, possibly, to the Hereford Cathedral Perpetual Trust? We all know that this would be outrageous. I think that we all recognise that charities are independent and are respected as such, and that it is entirely inappropriate that the Government of the day should help themselves to their assets for reasons of political expediency. Charities are a very important part of the fabric of our national life and, as such, are part of our informal and unwritten constitution.

A great deal has been said about the Bill of Rights and the intractable issues associated with that. The right honourable Dominic Grieve MP has posed to Ministers some questions that I think they will have great difficulty in answering. The noble and learned Lords, Lord Hope of Craighead and Lord Woolf, today similarly raised very serious and important questions. Mr Gove and the noble Lord, Lord Faulks, would not have been faced with this headache had not the Government foolishly, for populist reasons, sought to play fast and loose with the constitution. By the way, I very much welcome the return of the noble Lord, Lord Faulks, to his responsibilities on the Front Bench. There is nobody who can more charmingly and persuasively argue the unarguable: he is quite invaluable to the Government.

Among the issues that will fall to be considered in that context is the question of what citizens' rights should be in the digital age—the updating of the panoply of human rights. Of course, the Government have promised us legislation on surveillance. The right reverend Prelate the Bishop of Leeds, whose maiden speech was also a joy to hear, will be particularly well qualified, as a former staff member of GCHQ, to enable us to understand better the ethical and practical issues associated with surveillance and how to strike the right balance between security and civil liberties.

I want to make one final point, if I may detain the House for a moment longer. Most of us would agree that constitutional change is better made on the basis of mature consideration and consensus, but there is one constitutional proposal in the gracious Speech that is crudely confrontational: the requirement that members of trade unions should have to opt in to the political levy. That specific policy was not in the Conservative Party's manifesto and this House is fully entitled to oppose it.

So much work has been done on the funding of political parties: the Political Parties, Elections and Referendums Act 2000; the Hayden Phillips commission in 2006; a Ministry of Justice report in 2008; and the report of the Committee on Standards in Public Life, chaired by Sir Christopher Kelly, which came out in 2011. It is a disgrace that since all the issues have been articulated, and all the options are understood, the political parties have not managed to reach a concordat on this very important issue because they fear to lose some element of political advantage.

Reform is needed. Had the Government introduced comprehensive reform of the funding of political parties, and done so on a neutral basis which was not biased in favour of any political party, it would have been extremely welcome, but what is outrageous is that the party of government should legislate crudely to disadvantage the principal party of opposition. My noble friend Lady Hayter spoke about this and the noble Lord, Lord Trimble, made a very useful practical proposal. Other parties are at least equally entitled to complain. The noble Lord, Lord Rennard, spoke of the disadvantages that the Liberal Democrats face not only under the electoral system but in terms of funding.

Hitherto I have been opposed to the state funding of political parties. I have always taken the view that political parties are great voluntary associations and that members of political parties are citizens and democrats and it is right that they should raise their own money. But I now believe, regrettably, that it is necessary to have state funding of political parties. The old days of mass membership of political parties have gone, notwithstanding what may be happening in Scotland, and this is one of the reasons why a new politics is unable to break through. It is also one of the reasons for the cynicism that prevails so widely about politics and government.

There is a belief that money will buy political influence, influence on policy and, indeed, peerages. There is a perception of corruption that is widely pervasive at a high level among Britain's power elites. That is something new. It is something very dangerous. It is something that we need to deal with. The Government missed a very important opportunity to address this in the legislation on lobbying in the previous Parliament. We have a position in which the parties are excessively dependent for advice on think tanks which themselves are funded by wealthy individuals with agendas of their own, and because of what the coalition did to the Civil Service in the previous Parliament we have an eviscerated Civil Service that is unable to provide the experience and expertise that government needs.

There is a clutch of issues here that needs addressing if we are to rehabilitate our democracy. It would be better, contrary to what Mr Cameron says, to increase the cost of politics, at least in this regard. To run our democracy on the cheap turns out to be exceedingly expensive in terms both of trust and of quality of government.

10.54 pm

The Earl of Lindsay (Con): My Lords, I also want to welcome our three maiden speakers and their excellent maiden speeches. I warmly congratulate my noble friend Lord Dunlop on his appointment to the Scotland Office.

I want to put to my noble friend the point that the noble and learned Lord, Lord Hope of Craighead, made very forcibly, and that is that securing a strong and lasting constitutional settlement between the UK and Scotland will involve more than passing additional primary legislation to devolve additional powers. Indeed I think that, if he were with us, the noble Lord, Lord Smith of Kelvin, might also agree. When he launched the Smith commission agreement in November 2014, he added four personal recommendations. One of those recommendations was that:

"Both Governments need to work together to create a more productive, robust, visible and transparent relationship. There also needs to be greater respect between them.

This recommendation, I think, strikes a particular chord with anyone who was involved with the Calman commission, of which I was a member, and I see that the noble Lord, Lord Elder, and my noble friend Lord Selkirk, fellow members, are in the Chamber tonight.

To remind your Lordships, the Calman commission was established in late 2007 by the then Labour Government with the support of the Conservatives and the Liberal Democrats. Its remit was to review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes that would achieve a number of objectives. One of those objectives was to continue to secure the position of Scotland within the United Kingdom. The Calman commission issued its final report in June 2009, and the Scotland Act 2012 enacted many of its recommendations that required primary legislation. However, at the heart of the Calman commission report was an important series of recommendations that required little, if any, legislation, but on which relatively little progress had been achieved. Those recommendations are important as, had they become a reality, the noble Lord, Lord Smith of Kelvin, may not have felt the need to issue a plea for an improved relationship and greater mutual respect.

Part 4 of the Calman commission report was titled *Strengthening Co-operation*; it ran to 40 pages and made 23 specific recommendations. There was good reason why the Calman commission put co-operation at the heart of its report and dealt with it in such detail and at such length. That reasoning, and the recommendations that we made, are, I suggest, even more relevant and timely in today's circumstances than they were when we made them in 2009. We were convinced that as important, if not more important, than any further legislated changes to the balance of powers was the need for significantly greater co-operation between UK and Scottish Ministers, civil servants, Parliaments and parliamentarians. This conviction, those recommendations and the 40 pages of commentary that backed them were not plucked out of thin air on a whim. They were based on the evidence that we gathered, both from within the UK and, importantly, from other countries around the world that have had a longer history of devolved government. It was clear from the evidence that a resilient, flexible and successfully functioning devolved constitution depends on the quality of the co-operation and the strength of the relationships, both formal and informal, that exist between the various Governments, officials and Parliaments. It was equally clear that co-operation and constructive relationships are not optional extras. They are key ingredients of a strong and lasting constitutional settlement and are every bit as important as the balance of powers that may be prescribed through legislation.

Given the weight of the evidence, the Calman commission looked in detail at how, after 10 years of devolution since 1998, dialogue, collaboration and dispute resolution was working in practice between Governments, officials and parliamentarians. We looked equally at how they could be improved in the future. We found that examples of collaboration were too few in number and were struck by how underdeveloped intergovernmental and interparliamentary arrangements were.

I will not go into the detail of our recommendations tonight. However, I would strongly encourage my noble friend and his colleagues to dust off the Calman commission report, turn to part 4 and consider the detail of what we recommended. It addresses the fact that wherever there is a boundary between a reserved and a devolved power, mechanisms are needed to manage the issues and choices arising and to encourage or allow constructive cross-border discussion, co-ordination or joint action, whether against a backdrop of consensus or one of differences of opinion.

We considered and made recommendations on a number of existing formal and informal mechanisms, such as the Sewel convention, the memorandum of understanding, various cross-border departmental concordats and the joint ministerial committees. We considered and made recommendations on inter-parliamentary relations and the lack of opportunities for communication, dialogue, information exchange, joint working, joint committees, joint evidence-taking and reciprocal access. In addition, we made a number of recommendations on matters such as the conduct of intergovernmental ministerial meetings and the inevitable tensions arising from the three-way interaction between the UK, Scotland and Brussels.

Of the 63 recommendations made in total by the Calman commission, more than one-third of them dealt with strengthening co-operation and collaboration. It is a matter of regret that more of them have not been implemented. The relationship between Westminster and Edinburgh could only have benefited had they been implemented.

In response to the Smith commission agreement, the last Government published the document *Scotland in the United Kingdom: An Enduring Settlement* in January 2015. While most of the document deals with matters requiring primary legislation and fiscal measures, there is in the final chapter a brief but welcome reference to the issues that the noble and learned Lord, Lord Hope, and I have raised and that the noble Lord, Lord Smith, raised in his recommendations after his commission reported.

Para 9.1.2 states:

"Effective inter-governmental working is essential to guarantee the best possible provision of services and representation for the people of the UK; a renewed commitment to build these relationships

and explore better ways of working, as recommended by the Smith Commission Agreement, will require close collaboration between the UK Government and Devolved Administrations".

There is one other brief reference to those issues in that final chapter of the Government's response to the Smith commission.

Brief as the references are, I hope that they are like tips of an iceberg and represent a much larger commitment that we will shortly see. I hope, too, that my noble friend can assure us that as much effort will be invested in strengthening relationships, both formal and informal, across the border as will be invested in delivering and enacting the Scotland Bill.

To guarantee the strong and lasting constitutional settlement, the evidence is compelling, if you look at the UK since 1998 and at other countries where devolved constitutions have worked very successfully over many years, that primary legislation that defines and redefines the balance of powers is not by itself sufficient.

11.03 pm

Baroness Randerson (LD): My Lords, I wish first to congratulate those noble Lords who made their maiden speeches today. Each one was excellent and eloquent. In particular, I must congratulate the noble Lord, Lord Lisvane, whose title reflects the links with my own city of Cardiff.

There has been a remarkable level of agreement across the House today on concern at proposed changes on human rights and on a need for a constitutional convention. Many noble Lords have spoken about Scotland. I want to start by redressing the balance and talking about Wales. I strongly welcome the new Wales Bill, on which work was well under way in the last Government. I welcome the Government's intention to take it forward now. I believe that the Liberal Democrats were instrumental in ensuring that further devolution for Wales was high on the agenda and am delighted that it is now in this first gracious Speech. I will, however, warn the Minister that I will be pushing the boundaries on the Bill in terms of the additional powers that it proposes for the Welsh Assembly because the Liberal Democrats want to see policing, in particular, added to that list and some other areas. I remind the Government that the lesson of the last five years on devolution is that government initiatives which looked bold at the start were often overtaken by events. There has to be a coherent approach to create constitutional stability in Wales. In particular, I will also be pushing on reform of funding for Wales. I welcome the initiative to introduce a funding floor for Wales but any funding gap identified must be dealt with as a matter of immediate urgency. The Government must not stall and progress on this issue must continue.

We in Britain pride ourselves on our unwritten constitution. It is such a false pride and my party has argued for decades for a modern, written constitution but that of course has not been in the interests of the two largest parties. Now we are in a terrible muddle. A number of forces have combined, as many noble Lords have said today, to put us in an emergency situation—an untenable and unsustainable situation—because we are now in a multi-party state, with the electorate struggling to cope in a system which was designed in the 19th century for a two-party state. This produces ridiculous results. I thank the Electoral Reform Society for its publication today, which includes some very important statistics.

One can pluck any one of a host of those statistics to demonstrate the unfairness of the system. As my noble friend Lord Rennard referred to, a majority Government have been elected on just 37% of the vote and 24% of the potential electorate. Nearly a quarter of voters did not vote Conservative, Liberal Democrat or Labour. UKIP, as many noble Lords have referred to, got 12.6% of the vote and one MP whereas the Conservative Party got three times as many votes by percentage, and 331 times more MPs. The SNP got 50% of the vote in Scotland and 95% of Scottish MPs, which is unfair to all the other parties. I contend that these results are not just unfair, unpredictable and random. They are also dangerous for our democracy and potentially fatal for our union.

There is also the issue of the wasted votes. Nearly three-quarters of the votes cast made no difference to the eventual outcome, with 22 million people knowing that they wasted their time. Voters are increasingly aware of the problems of first past the post and struggle to make sense of it—to make it do what they want it to do. We are all familiar with tactical voting; we now have vote-swapping websites. I suggest that we, who boast proudly of being the oldest and most established of the modern democracies, should be ashamed that the electorate are driven to this. The Minister referred to the evolution of our constitution at the beginning of the debate but we do not have the luxury of evolutionary timescales. We are nowadays subject to internet time, where public opinion expects swift solutions.

The Minister also said that the Government have the answer to the West Lothian question—if only it were that easy. I challenge the Government to produce a law which does not affect Wales, either directly or indirectly. Such laws are very rare, and to come up with a solution involving simply Standing Orders will not solve the problem.

Among the multi parties that I have referred to, there is a strong strand of nationalism associated with devolution. The distortions of our system are emphasising the differences between the four nations of the UK. A different party is dominant in each nation: the Conservatives in England, Labour in Wales, the SNP in Scotland and the DUP in Northern Ireland. This is driving us apart rather than forging us together.

For the Conservatives in government, I believe that the price of maintaining the union may well be that in the end they are forced to accept some form of proportional representation. I do not believe that they will offer it willingly; there is a tradition in this country that Governments give way on constitutional reform rather than coming out to embrace it. I say to the Labour Party that it needs to face up to the fact that it may no longer be able to win under the current system.

There are many other issues, such as funding, where a doubling in the amount of donations since 2005 points to an increasing reliance on a small number of wealthy donors who get increasing power and control. I say to noble Lords that this issue will come back time and again to haunt political parties until it is sorted.

[Baroness Randerson]

Then of course there is the role of our House. For the first time in history a Conservative Government face a House of Lords that they do not dominate. My party, which wanted to see reform of this place, will say that we make no apologies to the Government for the fact that they will face an uphill task at times to get this House to accept and support their measures. It is our belief that reform is needed all the more now that the composition of the House bears so little resemblance to the political results in the other place.

If you overlay that with the self-imposed earthquake of the EU referendum and the proposals on human rights, you have a strong need for a constitutional convention. Events around the Scottish referendum have shown that a decisive result does not always decide the matter; the tremors tremble on. Our constitution has to be seen as a whole. You cannot shake up one part without the rest of it feeling the aftershocks. As ever, these Benches will be taking a strong interest in these constitutional issues. It is on constitution and human rights issues that the contrast between this Government and their predecessor will be most stark.

11.13 pm

Lord McAvoy: My Lords, I associate the Labour Benches with the tributes to the three maiden speakers today. They provided terrific entertainment. Great skill, expertise and commitment were shown by all three, and they were very much appreciated by the whole House.

Labour has committed to ensuring that the vow, as it has become known, is delivered in full, and that means keeping the Barnett formula alongside more powers to make the Scottish Parliament one of the most powerful devolved parliaments in the world. However, we cannot sit on the sidelines and allow the Conservative Government's social security cuts to target the most vulnerable in our society and drive more children into poverty. Labour will seek to amend the Scotland Bill to give the Scottish Parliament the final say on welfare and benefits.

Labour amendments to the Scotland Bill would give the Scottish Parliament the power to top up UK benefits and create new benefits of Scotland's own. Scotland would then have the powers to defend the vulnerable against Tory austerity while retaining the UK-wide pooling and sharing of resources offered by the Barnett formula. Labour's proposals would therefore protect Scotland from Conservative welfare cuts so there could never be another bedroom tax in Scotland supported by the Liberals and the Conservatives. Labour's proposals would also protect Scotland from any benefits cuts caused by a fall in Scottish funding, due, for example, to the collapse in the oil industry, the inevitable consequence of the nationalists' plan for full fiscal autonomy. This will deliver the security of a UK pensions and benefits system plus the power for Scotland to top up UK benefits and create new benefits specific to Scotland because the Scottish Parliament would have the financial freedom to support this. If Scotland loses the pooling and sharing of resources across the UK—

Lord Forsyth of Drumlean: I know the hour is late, but could the noble Lord tell us where the money is coming from?

Lord McAvoy: It will be entirely a matter for the Scottish Parliament to raise the money. You ask a question, you get the answer. If Scotland lost that pooling, there would be an additional £7.6 billion gap in Scotland's funding.

During the general election in Scotland, the SNP First Minister indicated that they wanted full fiscal autonomy and control of everything in Scotland. Then the penny dropped and it became that full fiscal autonomy would need to be negotiated over a period of years, so that cat is out of the bag.

Lord Forsyth of Drumlean: I thought the noble Lord was describing the Labour Party's policy, but he seems to be articulating the SNP's policy. He is not really explaining where the money would come from in order to provide these benefits, the protections, not having to pay the bedroom tax and the rest. We have just had an election campaign in which his party took a considerable defeat on its economic policy. How can he possibly advocate this?

Lord McAvoy: We have taken a defeat. The noble Lord, Lord Forsyth, indicated that we were defeated because of our economic policy. There were many reasons for our defeat, which we will deal with and hopefully fix in the future. The combination of the Barnett formula and the tax-raising powers of the Scottish Parliament will be entirely up to it. If it does not have the money to do these things, it will not do them. It is our policy to make sure that it has the choice to do so, and that is the difference.

Devolution is about all of the United Kingdom. The Labour Party and I endorse Ivan Lewis's statement that there is a duty on all parties within the Stormont Parliament to come to a responsible arrangement. We urge them all to do so. We also urge the Government to play a part in bringing these folk together as well.

Labour supports measures to put Welsh devolution on a stronger statutory basis, as in Scotland. We agree with taking forward proposals from the Silk commission and extending the power the people of Wales have over their transport, elections and energy. Wales must not be unfairly disadvantaged by the Barnett formula. The previous Government cut the Welsh budget by £1.5 billion, so this Government must ensure a fair funding settlement for Wales by introducing a funding floor, and we are glad to hear that that is what they are proposing. The measures that are expected to be put into the Wales Bill transfer new powers to Wales by implementing the agreed settlement for Wales and handing over more responsibility to the Welsh Assembly.

I am trying to paint the picture that devolution is not just about Scotland. Scotland is naturally taking all the headlines at the moment, but for devolution to work it must work for the United Kingdom.

I shall deal with one or two things that cropped up in the debate. My noble and learned friend Lord Falconer of Thoroton cleared the noble Lord, Lord Dunlop, of any guilt concerning the poll tax. My view is that if somebody is in the Scotland Office, I believe in collective guilt, so with one bound he is not free. I am still waiting to hear a complete denial of that.

The noble and learned Lord, Lord Hope of Craighead, had a very lucid, shrewd perspective, urging the SNP to nominate. I thought it was a very useful contribution: a voice comes from the non-political world, urging the SNP to get involved. The noble Lord, Lord Forsyth of Drumlean, has made some credible criticisms of the Labour Party over the past few years. I am not saying that I accept them, but they are credible and must be answered. He has some questions to answer himself, for instance about the performance of his Prime Minister on the steps of Downing Street on the morning after the referendum, with his quite disgraceful party-political broadcast on English votes on English laws, thereby giving the Scottish National Party the justification for saying that all unionist parties lied to the people of Scotland to get their vote and then withdrew everything else for it. He altered at a stroke the outcome of that referendum. It was a defeat for the SNP, but Mr Cameron's intervention helped to turn it into a victory for them. In addition, the Prime Minister compounded it by the scare tactics of using the SNP in England to get votes by frightening people in England about how Scotland was going to take over—Mr Miliband in Salmond's pocket, and all the rest of it. Therefore if there is some reckoning to be had, the noble Lord, Lord Forsyth, should be knocking on the door of No. 10 and making his point of view heard. Knowing him as I do, he has probably been there already.

I also picked up on the issue of voting systems. I was quite surprised to hear my two noble friends Lady Adams of Craigielea and Lord Foulkes of Cumnock indicate, in all honesty, that perhaps a look should be taken at the voting systems. However, the votes study, which the noble Lord, Lord Flight, mentioned and my noble friend Lord Gordon of Strathblane analysed, does not give a clear picture of the problem would be solved by the introduction of the Liberals' holy grail of proportional representation. My noble friend Lord Gordon destroyed that case—it is not a clear picture. We are all interested in tackling the problems; all the Liberals can talk about is proportional representation, which gets quite boring.

Lord Foulkes of Cumnock: I do not purport to speak for my noble friend Lady Adams, who is more than able to do that. However, all we said was that that matter should be looked at, and I am sure that even my noble friend on the Front Bench would not object to that.

Lord McAvoy: That is absolutely right, and that is the point I made: that both my noble friends were genuinely and honestly considering whether this is a problem. There is nothing wrong with that at all, and I go along with that.

I must deal with my friend with a small "f", the noble Lord, Lord Sanderson of Bowden. Again, he was one of the few people not to say something during his speech that was said previously, and he indicated that as well. He may not know it, but he is a local hero in Rutherglen, Cambuslang and Halfway—he does know it—for his services to those areas in local government reorganisation in the 1990s.

I will quickly mention something the noble Lord, Lord Jopling, said when he seemed to warn the Labour Party about the constitutional danger of voting against the Government. I remind him that between 1997 and 2010 this House defeated the Labour Government over 500 times, so the lecture, if it was meant to be that, was a bit misplaced.

Finally, before I get accused of provoking people, the noble Lord, Lord Truscott, made a point about the £1,600 per head that Scotland gets. That is part of the metropolitan attitude that annoys people not just in Scotland but in Wales, the north, the north-west of England and elsewhere. If you took away the hidden government subsidy to London and the south-east from government bodies, contracts, employment and all the rest of it provided by the United Kingdom Government, there might be a better case for complaining about Scotland and elsewhere. However, there is a case for the decentralisation of England. Before I upset anybody else, I will close with that.

11.24 pm

Lord Faulks: My Lords, this has been a lengthy but remarkable debate. It has contained a little bit of post-election blues, understandably, with various suggestions for improving the electoral system. But for the most part it has contained a number of extremely constructive suggestions from all quarters of the House, dealing with the ambitious electoral programme that is part of the gracious Speech. It is unsurprising that your Lordships' House has looked carefully at all the different Bills and proposals contained in the Speech and has shown already an appetite for scrutiny of which I am sure that we will see evidence in the months to come.

To some extent, I will not have detailed replies to the various suggestions, because of the fact that this is the first Queen's Speech in the new Parliament, and quite a few of the Bills have not even been published. But what has been said has been extremely valuable, and I can assure the noble Lord, Lord Foulkes, that I shall take back those observations that are relevant to the Secretary of State for Justice. All the comments contained in this debate will be considered carefully by the Government.

I should also like to congratulate our maiden speakers, coming appropriately, given the theme of the debate, from different parts of the United Kingdom. There was the right reverend Prelate the Bishop of Leeds, a veritable northern powerhouse himself. My noble friend Lord Dunlop unusually made his maiden speech from the Dispatch Box; he will be a valuable ministerial colleague. As many noble Lords know, he has great experience in an area in which he will be scrutinised, or the proposals will be scrutinised, in considerable depth. The noble Lord, Lord Lisvane, has kept us waiting a little longer before making his maiden speech, but it was well worth the wait. We are grateful for all their speeches, and I know that they will greatly inform our debates in future.

The Government are committed to governing for the whole of the United Kingdom. We are one country and we will govern with respect, giving due and proper recognition to our four constituent parts and their Governments. Notwithstanding the penetrating analysis by my noble friend Lord Forsyth of some of the difficulties, particularly in relation to Scotland, I share

[LORD FAULKS]
the positive approach shown by the noble Lord, Lord McFall. We should be looking forward. Devolution enables decisions to be taken in closer proximity to the people whom they affect and gives us the safety and security of being part of the bigger United Kingdom family of nations. We believe in rebalancing the economy to enable wealth to be created more fairly and evenly across the whole country. The devolution packages that have been considered in the course of this debate today will provide the incentives necessary to drive growth in each part of the United Kingdom.

In this Parliament we will fulfil our commitments and implement as fast as possible, as is consistent with good government, the further devolution that all parties agreed for Wales and Scotland, and deliver the Stormont House agreement in Northern Ireland. In parallel, we need to have governance arrangements that are fair for England; in that context, we will bring forward the proposals on English votes for English laws.

I acknowledge that there has been a considerable groundswell of support around the House for what has been for the most part described as a constitutional convention, although various other expressions were used in the course of the debate. The Prime Minister has said that he wants to make our United Kingdom work for all our nations. The Government welcome a discussion on how best to do that, including ideas for constitutional discussion and debate. There were some suggestions before the debate that such a convention should draw up a statute or charter of the union, such as a charter most recently recommended by the Bingham Centre for Rule of Law, referred to by my noble friend Lord Norton of Louth. In the Government's Command Paper *The Implications of Devolution for England*, the Conservative Party said that if a constitutional convention or commission was established, it should be concerned with the effective functioning of the union and could consider the case for a statute of the union, but that such a body should not delay plans for further devolution or the introduction of English votes for English laws. There was, of course, no reference to such a convention in the Conservative Party manifesto, as opposed to the manifestos of Labour and the Liberal Democrats.

I know that English votes for English laws was criticised, notably by my noble friend Lord Lawson, who deplored the idea of there being two classes of Members of Parliament. Attention was drawn to the difficulty of identifying issues where the Barnett formula would be excluded. In answer to the noble Lord, Lord Lennie, I am told that there were a number of Bills in the last Parliament which would have satisfied the criteria and that there is one Bill—the education and adoption Bill—to be introduced shortly which will fulfil those criteria. However, the Government are revising Commons rules to make the law-making process fair and sustainable and changes to Standing Orders will ensure that Bills, or parts of Bills, that do not apply to all parts of the UK will be voted on only by MPs representing affected constituents.

Turning to Northern Ireland and the Stormont House agreement, the Bill gives effect to key elements of the Stormont House agreement that will deal with the legacy of the past. There have been problems in relation to welfare reform, as noble Lords are aware, and it has been said that the UK Government may need to take control of welfare. The Government agree that the situation is serious, which is why the Secretary of State has chaired intensive discussions over recent days. Welfare reform is a key part of the agreement. Without it the Executive's budget does not add up and that potentially puts devolution at risk, so it is essential for everybody that these issues are resolved, as a number of noble Lords said.

Reference was made to the commitments made in the Stormont House agreement to deal with the legacy of the Troubles. The Government will establish a historical investigations unit, provide for an independent commission on information retrieval and establish an oral history archive. The House will recall the outstanding speech of the noble Lord, Lord Bew, which emphasised the importance of contextualising these investigations so that they do not frustrate what should be achieved by them.

As to Wales, I am glad that the noble Baroness, Lady Randerson, so recently associated with Wales in a ministerial capacity, welcomes the changes delivering what the Government have promised, although she indicated that there were certain areas in which she will push for more.

I turn to the Government's plans to make the criminal justice system work better for victims—a matter which I will deal with, as my noble friend Lord Dunlop said. Measures to increase the rights of victims of crime will make sure that victims receive the support and information from criminal justice organisations to which they are entitled. This is an area on which all parties' manifestos contained proposals of a similar nature.

Victims often feel let down and they are the people we owe the greatest duty of care towards. Our plans to enhance victims' rights go hand in hand with the improvements we are making to help victims of crime navigate the criminal justice system, access the information and support they need and protect vulnerable victims and witnesses in court.

In December 2013, the Government implemented a revised victims' code to give victims clearer entitlements and a louder voice in the criminal justice system with, for the first time, the right to ask to read their personal statement to the court. However, the experience of victims in the criminal justice system too often falls short of what they have a right to expect. Enshrining victims' rights in primary legislation will make absolutely clear to criminal justice agencies that they must comply with their duties towards victims.

Before I turn to the substantial issue of human rights, I ought to deal with a number of matters which were raised during the debate. On the question of IPP sentences, the noble and learned Lord, Lord Brown of Eaton-under-Heywood, has assumed the mantle of Lord Lloyd, recently retired—and a remarkable mantle it is. The noble and learned Lord drew attention to the power that the Secretary of State has to consider responding to the challenge that IPP prisoners face. Of course, he and the House will be aware that a Secretary of State has to consider the individual and their tariff sentence but at the same time has to be minded about the Parole Board's assessment of whether any individual

may be a risk if released into society. It is something that will be on the Secretary of State's agenda of things to be considered early in his time in office.

The noble Lord, Lord Dubs, referred to assisted dying and the Private Member's Bill brought forward by the noble and learned Lord, Lord Falconer of Thoroton, in the previous Session of Parliament. I think that the Bill has found its way into the current ballot but is not terribly high up. I do not want to raise expectations in this regard but the Government are aware of the issue and will consider the question during the course of the next months or years.

I am glad that there is a general welcome from the noble Lord, Lord Ramsbotham, and my noble friend Lord Black for the judicial oversight in relation to bail. I know that the noble Lord, Lord Ramsbotham, will hold the Government very much to account in relation to prisons. I am glad that he welcomed certain signs from the Ministry of Justice that the Secretary of State will place a considerable emphasis on education in prisons. I am sure that he will be anxious to ensure that the reforms that were begun in rehabilitation can be maintained and that prisons become a useful place of rehabilitation.

A great deal has been said about the Human Rights Act on all sides which is misleading. The Government were elected with a mandate to replace the Human Rights Act with a Bill of Rights. Human rights and their protection are the hallmarks of a civilised society and this Government will be as committed as any other Government to upholding fundamental human rights. But the truth is that the cause of human rights has been undermined by various failures of the Human Rights Act. We will now look at how to strike an appropriate balance between rights and responsibilities. There is a clear will in the country to ensure that human rights laws are not abused by those who would do us ill. That does not entail weakening fundamental human rights. It is important to emphasise that human rights were protected long before 1998, and they will continue to be protected under a Bill of Rights.

This will be a significant piece of legislation. It will be of interest to many inside Parliament and beyond. Over the coming months we will draw up proposals to implement this vital reform. We will then take time to consult widely and draft legislation which meets the needs of a modern democratic society.

I am sure that the noble and learned Lord, Lord Falconer of Thoroton, who I think welcomed the fact that there was going to be consultation in relation to the Bill, will accept that when one is making constitutional changes, for that is what they will be, it is important to pause. The changes to the role of Lord Chancellor, which he has very frankly admitted were perhaps a little hasty, are an example. We want to try to get this right.

I want to emphasise as strongly as I can that we are not getting rid of human rights, nor are we going to ignore the convention. The Bill of Rights is likely to reflect all the rights in the convention. We are anxious to maintain what has been a very proud history for many centuries of protecting human rights in this country. Human rights were protected by the common law. Human rights were protected by Parliament and will continue to be protected by Parliament. Let us look at the Modern Slavery Act, so recently passed by Parliament. That was not as a result of the Human Rights Act. Of course there is a prohibition on slavery contained in the convention. But our abolition of slavery long preceded the convention and modern slavery was a nuanced response to a particular situation.

During the debate the noble Lord, Lord Cashman, who is not in his place, seemed to imply that some of the advances in the approach to liberal causes were peculiarly as a result of the Human Rights Act. Same-sex marriage—an important piece of legislation brought in by the coalition Government during the last Parliament—had nothing to do with the Human Rights Act. In fact, there was a real anxiety that Strasbourg would prevent it becoming law, because when an attempt had been made to argue that there should be same-sex marriage, it did not succeed in Strasbourg, but because of a triple lock in the Bill it was generally considered—although not by all—that the legislation would survive.

The problem with the Strasbourg jurisprudence is that it has been of variable quality, and there has been a general sense that human rights—a noble aspiration, as has quite rightly been pointed out in this debate, stemming from what happened in the Second World War, finding its realisation in 1948 in the Universal Declaration of Human Rights and finding its way into the European convention—have been diminished by some of the ways in which it has been used. The Supreme Court has felt itself more or less bound, notwithstanding the provisions of Section 2 of the Human Rights Act. The case of Ullah was a wrong turning by the Supreme Court. In recent years, the Supreme Court has gradually begun to establish what is rather quaintly described as a dialogue with Strasbourg. The noble and learned Lord, Lord Hope of Craighead, rightly said that quite a lot of the Strasbourg jurisprudence is now woven into the common law like Japanese knotweed. That may be so, and I do not suggest for a moment that the jurisprudence from Strasbourg is all not of good quality.

Of course, we should not be insular. We should, in developing our law, look beyond our shores to Strasbourg but not only to Strasbourg. Many judges recently, writing extrajudiciously, have emphasised that the common law itself should be growing organically, as it does, that it has been far too centred on reacting one way or another to the Strasbourg jurisprudence, and that it should, in fact, have been looking elsewhere and not peculiarly at Strasbourg, and should sometimes have simply ignored Strasbourg.

We want a British Bill which will reorient our rights in Britain. The Supreme Court should be supreme. My noble friend Lord Flight referred to the fact that the Abu Qatada case went to our Supreme Court and was then overturned in Strasbourg. The beguiling metaphor used by the Labour Party in 1997 and then in the 1998 Act was that it was bringing rights home. In fact, it was subcontracting the rights to a considerable degree to Strasbourg. We want to bring rights home to this country so that they are protected by our Supreme Court and our Parliament—let us have faith in our Parliament to protect rights—rather than by the inconsistent jurisprudence of Strasbourg.

[LORD FAULKS]

Nevertheless, we want to consult widely. The noble Baroness, Lady Kennedy, said that there has been a commission. Of course, she was a distinguished member of it; I was a less distinguished member. The majority of the commission concluded that there should be a British Bill of Rights. I welcome the fact that the noble Lord, Lord Marks, is not against the idea of a British Bill of Rights, but understandably—and we agree with this—it is what is in the Bill that is important.

It will not be forgotten that in 2007 Gordon Brown published a Green Paper exploring the possibility of a British Bill of Rights. In 2009 the Labour Government launched a consultation process into a Bill of Rights entitled *Rights and Responsibilities: Developing Our Constitutional Framework*. I hope that this House, in performing its scrutiny, will honour the fact that there is a mandate to produce this Bill, will scrutinise it carefully, perhaps consider some of the suggestions made by my noble and learned friend Lord Mackay about a degree of democratic override and decide what should be in any such Bill.

I conclude by referring to some rather mysterious comments, which I think mostly emanated from the Liberal Democrat Benches, about the Salisbury convention. They first found their way into a speech by the noble and learned Lord, Lord Wallace of Tankerness, on the first day. They were repeated, I think, in some form by the noble Lord, Lord Thomas of Gresford, and then by the noble Baroness, Lady Randerson. I may have misunderstood it but I thought that what was being said was that there was something unsatisfactory about the electoral system. Of course, the psephology was explained by the noble Lord, Lord Rennard. As a result of that, the Liberal Democrats felt comfortable in ignoring the normal convention—the Salisbury convention.

Lord McNally: This is straining at gnats. I was a member of the Cunningham commission that looked at the Salisbury convention and put forward a report adopted by this House. It had one very clear point in it; that is, the House of Lords retains the right to say no. If it did not retain that right, there would not be a need for a Parliament Act. That is the only point that is made. The idea that the Salisbury convention, or what was in the Cunningham convention, allows the Government of the day to get their will, whatever their proposals or whatever is said in a Bill, is not in any convention because the House of Lords retains the right to say no. That is all that has ever been said from these Benches.

Lord Faulks: That is precisely what I thought was being said by the Liberal Democrats. It is now on the record and I understand that I have been disabused of the misunderstanding that I must have had about the Salisbury convention. I looked at the Library Note and saw what was said about it. In due course, no doubt that will find its expression in a response to various Bills which satisfy the description of unacceptable in one way or another to the Liberal Democrats.

I hope and expect that all the legislation will be scrutinised with great thoroughness from all quarters of this House. I and the Government welcome that. I hope that it will be possible for the Government to fulfil their ambition that this should be a one-nation Government. There has been some competition for ownership of that phrase, originated, I think, by Disraeli. I thought I was a one-nation Conservative. I then found that Ed Miliband was a one-nation politician and, once again, we have attempted to reclaim that expression. It is in fact a noble aspiration—although "aspiration" is another word about which there is some contest.

In any event, I hope that we can be one nation as a result of the legislation, which this House will, no doubt, help to make better and help this Government achieve its aspiration.

Debate adjourned until tomorrow.

House adjourned at 11.49 pm.

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